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Proceeding/Serial No: 91156321

Filed: 4-15-2008

**Title: THE CHAMBER OF COMMERCE OF THE
UNITED STATES OF AMERICA V. UNITED STATES
HISPANIC CHAMBER OF COMMERCE FOUNDATION**

Part 1 of 6



April 14, 2008

Via Federal Express

Trademark Trial and Appeal Board
U.S. Patent and Trademark Office
Madison East, Concourse Level Room C 55
600 Dulany Street
Alexandria, VA 22314

Re: *The Chamber of Commerce of the United States of America v.*
United States Hispanic Chamber of Commerce Foundation,
Opposition No. 91/156,321

Dear Sir or Madam:

Enclosed, please find Opposer's Notice of Filing of Certified Transcripts of Trial Testimony with Supporting Exhibits, filed concurrently via the Board's ESTTA system.

Very truly yours,

Diane Shedd

Diane K.S. Shedd



04-15-2008

U.S. Patent & TMO/TM Mail Rpt Dt #72

91/156321

**IN THE UNITED STATES PATENT AND TRADEMARK OFFICE
BEFORE THE TRADEMARK TRIAL AND APPEAL BOARD**

THE CHAMBER OF COMMERCE OF
THE UNITED STATES OF AMERICA

Opposer,

v.

UNITED STATES HISPANIC CHAMBER
OF COMMERCE FOUNDATION

Applicant.

Opposition No.: 91/156,321

Serial No.: 78/081,731

**NOTICE OF FILING OF CERTIFIED TRANSCRIPTS
OF TRIAL TESTIMONY WITH SUPPORTING EXHIBITS**

Opposer, The Chamber of Commerce of the United States of America, pursuant to Trademark Rules 2.123 and 2.125, hereby submits copies of the following final certified transcripts of trial testimony, along with all exhibits attached thereto, for filing in the above referenced opposition proceeding:

- (1) Stephen A. Bokat (June 28, 2007)
- (2) Patricia A. Cole (June 20, 2007)
- (3) Karen R. Elzey (June 19, 2007)
- (4) Christine A. Kanuch (June 20, 2007)
- (5) Lydia Carlotta Miles Logan (June 26, 2007)
- (6) Lucia H. Olivera (June 22, 2007)
- (7) Bradley L. Peck (June 26, 2007)
- (8) Rita Perlman (June 27, 2007)

These materials are being filed by overnight courier addressed as follows:


UNITED STATES PATENT AND TRADEMARK OFFICE
Commissioner for Trademarks
P.O. Box 1451
Alexandria, VA 22313-1451

Pursuant to Trademark Rule 2.125, a copy of this notice is being provided to Applicant, United States Hispanic Chamber of Commerce Foundation. It is believed that Applicant already has copies of all of the submitted materials. If not, Applicant is invited to contact Opposer.

Dated: April 14, 2008

Respectfully submitted,

KENYON & KENYON LLP

By: 

Erik C. Kane
KENYON & KENYON LLP
1500 K Street, N.W.
Washington, DC 20005
Tel.: (202) 220 - 4200
Fax: (202) 220 - 4201

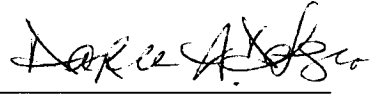
*Counsel for Opposer,
The Chamber of Commerce of the
United States of America*

CERTIFICATE OF SERVICE

I hereby certify that a true and correct copy of *Notice Of Filing Of Certified Transcripts Of Trial Testimony With Supporting Exhibits* was served, via fax and first-class mail, postage prepaid, on attorneys for Applicant, as follows:

Jill M. Pietrini, Esq.
Andrew Eliseev, Esq.
MANATT, PHELPS & PHILLIPS L.P.
11355 West Olympic Blvd.
Los Angeles, California 90064-1614

April 14, 2008

A handwritten signature in black ink, appearing to read "Daria A. DeLizio", is written over a horizontal line.

Daria A. DeLizio

ORIGINAL

1

1 IN THE UNITED STATES PATENT AND TRADEMARK OFFICE

2 BEFORE THE TRADEMARK TRIAL AND APPEAL BOARD

3 - - - - - x

4 THE CHAMBER OF COMMERCE OF THE :

5 UNITED STATES OF AMERICA, :

6 Opposer, :Opposition No.

7 v. :91/156,321

8 UNITED STATES HISPANIC CHAMBER :

9 OF COMMERCE FOUNDATION, :Serial No. 78/081,731

10 Applicant. :

11 - - - - - x

12 Thursday, June 28, 2007

13 Washington, D.C.

14
15 Deposition of STEPHEN A. BOKAT, commencing at

16 10:09 a.m., held at the offices of Kenyon & Kenyon,

17 1500 K Street, N.W., Washington, D.C., before Keith

18 Wilkerson, a notary public in and for the District of

19 Columbia.

A P P E A R A N C E S O F C O U N S E L

Attorneys for the Opposer:

Kenyon & Kenyon

1500 K Street, N.W.

Suite 700

Washington, D.C. 20005

(202) 220-4200

BY: EDWARD T. COLBERT, ESQ.

ERIK C. KANE, ESQ.

Chamber of Commerce of the United States

1615 H Street, N.W.

Washington, D.C. 20062

(202) 463-5337

BY: JUDITH K. RICHMOND, ESQ.

A P P E A R A N C E S O F C O U N S E

Attorneys for the Applicant:

Manatt, Phelps & Phillips

11355 West Olympic Boulevard

Los Angeles, California 90064

(310) 312-4384

BY: JILL M. PIETRINI, ESQ.

ANDREW ELISEEV, ESQ.

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1 P R O C E E D I N G S

2 Whereupon,

3 STEPHEN A. BOKAT

4 was called for examination by counsel for Opposer
5 and, after having been duly sworn by the notary
6 public, was examined and testified as follows:

7 EXAMINATION BY COUNSEL FOR OPPOSER

8 BY MR. COLBERT:

9 Q. Good morning, Mr. Bokat.

10 A. Good morning.

11 Q. Would you please state your full name for the
12 record?

13 A. Stephen Arthur Bokat.

14 Q. Are you presently employed?

15 A. No.

16 Q. Are you retired?

17 A. Yes.

18 Q. Prior to your retirement where did you work?

19 A. I was working for the U.S. Chamber of
20 Commerce.

21 Q. And what was your position there?

22 A. I actually had two positions. I was senior

1 vice president, general counsel, and secretary of
2 the U.S. Chamber. I was also executive vice
3 president of the National Chamber Litigation
4 Center, a Chamber affiliate.

5 Q. And how long were you executive vice
6 president of the National Chamber Litigation
7 Center?

8 A. Well, I'm trying to remember exactly. My
9 title changed several times while I was there. I
10 started as the senior labor counsel in 1977. I
11 became the vice president, I think, in 1982, and
12 executive vice president, I don't remember the
13 exact date, but it was probably in the late '90s.

14 Q. Your other position, senior vice president,
15 general counsel and secretary of the U.S. Chamber
16 of Commerce, how long did you hold that position?

17 A. I became the vice president and general
18 counsel of the Chamber in 1983, and I was promoted
19 to a senior vice president, I believe, probably in
20 1999. I'm not sure. It might have been a year one
21 way or the other.

22 Q. Were you employed at the U.S. Chamber of

1 Commerce prior to 1983, then?

2 A. I was employed by the National Chamber
3 Litigation Center beginning in 1977. The first
4 five years I worked just for the affiliate.

5 Q. I'd like to focus on your position as general
6 counsel at the U.S. Chamber of Commerce. What were
7 your responsibilities as general counsel of the
8 U.S. Chamber of Commerce?

9 A. I oversaw all legal issues involving the
10 Chamber, including contracts and leases,
11 intellectual property, and labor and employment
12 issues. My job in general was to ensure the
13 compliance of the Chamber with all laws and
14 regulations, to advise the staff on what laws and
15 regulations were applicable to it and to defend the
16 organization in any litigation initiated against
17 it, and occasionally to bring litigation when it
18 was necessary on the Chamber's behalf. It was a
19 typical in-house counsel's role.

20 Q. Now, looking at your position with the
21 National Chamber Litigation Center, what were your
22 duties there?

1 A. The National Chamber Litigation Center
2 engages in public policy litigation on behalf of
3 the Chamber by both initiating litigation,
4 primarily challenging government laws and
5 regulations, and filing amicus curiae briefs of
6 major importance in the business community. During
7 my first five years there my responsibilities were
8 primarily limited to labor and employment issues
9 but expanded after that.

10 Q. Can you please describe what the U.S. Chamber
11 of Commerce is, how it was formed and what it does?

12 A. I can. The Chamber was originally formed in
13 1912 at the behest of President Taft, who spoke to
14 a large number of members of the business community
15 and said that the business community needs to speak
16 with one voice in Washington about what the
17 business community wants and needs from the federal
18 government.

19 After that, a group of businessmen coalesced
20 around the idea of forming an organization which
21 they called the Chamber of Commerce of the United
22 States. It was formed in 1912, and it was formally

1 incorporated in 1916.

2 Q. Is there any particular focus of the U.S.
3 Chamber of Commerce in terms of the level at which
4 it exercises its functions?

5 MS. PIETRINI: Objection. Leading.

6 A. The organization represents the business
7 community both nationally and internationally. Its
8 primary focus is on representing the business
9 community before the federal government, and that's
10 all branches of the federal government, the
11 legislature, the executive and the courts, through
12 the Litigation Center. The Chamber's heavily
13 involved in lobbying Congress, and it in essence
14 lobbies the executive branch as well, files
15 comments on government regulations, provides a
16 great deal of information through a variety of
17 resources to its members both large and small about
18 what's going on in Washington, and provides a
19 number of publications to members.

20 It is also very, very active internationally,
21 very involved in international trade issues,
22 maintains offices overseas, including in Brussels,

1 Belgium, but it has a very active international
2 program. They represent the American business
3 community primarily in issues around the world.

4 Q. Now, are you familiar with other
5 organizations, business organizations, at a state
6 or local level that use the phrase "Chamber of
7 Commerce" in their name?

8 A. Yes. There are many thousands of them. Many
9 of them are members of the U.S. Chamber; some are
10 not.

11 Q. Can you describe the relationship between the
12 U.S. Chamber of Commerce and the state and local
13 chambers that aren't members?

14 A. The Chamber has always seen as one of its
15 roles to provide help and assistance to state and
16 local Chambers of Commerce, particularly those that
17 are members, and works cooperatively with them in a
18 number of efforts. The Chamber has an entire
19 section devoted to relationships with state and
20 local chambers and associations as well, trade
21 associations, and it has a certification program
22 that certifies state and local chambers that are

1 operating, if you will, in sort of a good
2 governance manner.

3 It provides guidelines to state and local
4 chambers as to how they should operate. It
5 provides a lot of information to them on things
6 that are going on in Washington that particularly
7 affect state and local chambers, and it utilizes
8 them to help get the Chamber's message out and to
9 help lobby Congress to be the grass roots system by
10 which the U.S. Chamber can speak to Congress.

11 Q. Does the U.S. Chamber lobby state and local
12 legislatures?

13 A. Very little. The only issue, and this is
14 quite a recent development, is the issue of legal
15 reform. The Chamber, it's no secret, has been very
16 concerned in the last eight or ten years about the
17 growth of litigation against businesses and has for
18 the first time that I can recall in any significant
19 manner lobbied state and local governments in
20 conjunction with these state and local chambers on
21 legal reform issues. Otherwise it leaves those
22 efforts solely to the state and local chambers.

1 Q. You mentioned trade associations as somehow
2 distinct from a local chamber of commerce. Can you
3 describe what you mean by a trade association?

4 MS. PIETRINI: Objection. Leading.

5 A. A trade association is an organization that
6 represents a particular line of business, a
7 particular trade, it could be trucking, it could be
8 chemicals, it could be oil, and these are
9 organizations designed to represent businesses that
10 are engaged in a particular kind of business.
11 Chambers represent a broad cross-section of the
12 business community without regard to the trade that
13 they're in.

14 Q. Now, you identified the National Chamber
15 Litigation Center as an affiliate of the U.S.
16 Chamber of Commerce.

17 A. That's correct.

18 Q. What do you mean by an affiliate?

19 A. An affiliate means mostly common management.
20 Non-profits of course can't be owned, so the
21 Chamber does not own their affiliates. These
22 organizations operate under the same roof but are

1 separately incorporated organizations, sometimes
2 with a different tax status from the Chamber and so
3 on, that have been created to provide other kinds
4 of services. It was believed that incorporating
5 them separately for various reasons made sense.

6 Q. Now, other than the National Chamber
7 Litigation Center, are there other affiliates of
8 the U.S. Chamber of Commerce?

9 A. Yes. There are a number of them. It's hard
10 to keep track of them. I think there are
11 approximately seven affiliates, affiliated
12 corporations.

13 Q. Can you name any of them?

14 A. Certainly. Well, the National Chamber
15 Litigation Center we already talked about. The
16 U.S. Chamber Institute For Legal Reform, the
17 National Chamber Foundation, the Institute for a
18 Competitive Workforce, the Center For International
19 Private Enterprise, CIPE. I'm trying to think if
20 I'm missing any. There may be one or two others
21 that are escaping my aging memory at this point.

22 Q. I think you identified what the National

1 Chamber Litigation Center does. What does the
2 National Chamber Foundation do?

3 A. It's a 501(c)(3) corporation, and it
4 primarily does research and seminars of importance
5 to the business community.

6 Q. The Institute For Legal Reform?

7 A. As its name suggests, its primary goal is to
8 try and reform runaway trial lawyers and abusive
9 litigation that the Chamber believes exists in this
10 country.

11 Q. Now, you mentioned local and state chambers.
12 Does every state have a Chamber of Commerce?

13 A. I believe there are one or two states that
14 actually don't have -- they all have Chambers of
15 Commerce, but I believe there's one or two states
16 that don't have a state Chamber of Commerce for
17 reasons I don't know.

18 Q. Of the states that do have Chambers of
19 Commerce identified as the state Chamber of
20 Commerce, are those members of the U.S. Chamber of
21 Commerce?

22 A. The last I knew, which may have been several

1 months ago, almost all, if not all, were members.
2 There may be one or two that were not, but the
3 vast, vast majority were members.

4 Q. Has the U.S. Chamber of Commerce ever taken a
5 position that a local or regional Chamber of
6 Commerce cannot use the words "Chamber of
7 Commerce"?

8 A. No.

9 Q. Do you have a sense for how well known in the
10 business community the U.S. Chamber of Commerce is?

11 MS. PIETRINI: Objection. Lacks
12 foundation. Leading.

13 A. It's exceptionally well known. I mean, this
14 is an organization that's in the papers every
15 single day. Every day I would receive clips from
16 the Chamber's media office of every mention of the
17 Chamber in the media, and there are always at least
18 dozens of references to it, it didn't have the exact
19 text, and there were so many they would only provide
20 texts from the major publications like the LA
21 Times, the Washington Post, and so on.

22 It would include other places it would be

1 mentioned, and it's mentioned literally hundreds of
2 times a day. It's constantly in the press and
3 testifying before Congress, and its staff is
4 constantly sought out by reporters, so it's
5 exceptionally and widely well known.

6 Q. Have you yourself personally been interviewed
7 by the media in connection with your duties for the
8 U.S. Chamber of Commerce or the National Chamber
9 Litigation Center?

10 MS. PIETRINI: Objection. Leading.

11 A. Yes, hundreds and hundreds of times. I was
12 the principal spokesperson for the Chamber on
13 issues of litigation, particularly those involving
14 broad-based business issues. I have appeared on
15 every major network numerous times, syndicated
16 radio shows, talk shows. I've been quoted in I dare
17 say every major publication in the United States
18 primarily about litigation affecting the business
19 community.

20 Q. Are you identified in these quotes in the
21 media?

22 MS. PIETRINI: Objection. Leading.

1 A. I was. In fact, this presented almost a
2 problem for us, because the National Chamber
3 Litigation Center was separately funded, and part
4 of my responsibilities was to raise money for the
5 litigation center. We wanted to have a separate
6 identity so people would say oh, NCLC, I want to
7 support that, they're doing this work. But what the
8 reporters would say is can we use the Chamber
9 title, the Chamber name rather than National
10 Chamber Litigation Center, and I would ask them to
11 use National Chamber Litigation Center.

12 Many times they'd say do you mind if I use the
13 U.S. Chamber, everyone knows who the U.S. Chamber
14 is, they don't know the National Chamber Litigation
15 Center.

16 Q. And did they in fact identify you as being
17 with the National Chamber of Commerce?

18 A. Sometimes they did, but more often than not,
19 on the chiron, which is the thing that puts the
20 words below your picture, it would say U.S. Chamber
21 of Commerce.

22 Q. Have you ever heard of the Spirit of

1 Enterprise Award?

2 A. Yes. This is an award that the Chamber has
3 given out for approximately 20 years to members of
4 Congress who vote with the Chamber. When I say
5 "with the Chamber" I mean the Chamber would say we
6 support maybe the immigration legislation as an
7 example. If a congressman voted with our position
8 on issues a certain percentage, I believe 70
9 percent, every year we would go up to the Hill and
10 hold an award ceremony where we would give them a
11 plaque that they could put on their wall that said
12 Spirit of Enterprise Award to Congressman XYZ.

13 Q. Were those plaques, to the best of your
14 knowledge, displayed?

15 MS. PIETRINI: Objection. Lacks
16 foundation and leading.

17 A. If you go to Capitol Hill you'll see these
18 plaques all over congressmen's offices. They're
19 usually very proud of it. They would make sure
20 they sent a picture of themselves receiving the
21 award to their hometown newspaper because they
22 wanted to be seen as getting this. They felt it of

1 course would be impressive to their constituents.

2 Q. Are you familiar with the Association
3 Executive of the Year Award?

4 A. Yes. It is an award given by an association
5 newspaper that's published here in Washington but
6 is circulated nationally, and Tom Donohue, who's
7 president and CEO of the Chamber, was the recipient
8 of that award this past year.

9 Q. Does the U.S. Chamber of Commerce get
10 involved in anti-counterfeiting activities?

11 A. Yes, we do. That has been a high priority.
12 It's primarily a priority that's been handled by
13 the National Chamber Foundation. The Chamber has
14 been exceptionally concerned because of concerns
15 raised by its members, and we're talking about
16 product counterfeiting, just to make it clear, not
17 counterfeiting of money.

18 We've learned that many U.S. products are
19 being illegally made and marketed overseas,
20 primarily in China. Software and TV shows have
21 been largely heard about, but it's a big problem
22 with pharmaceuticals, and it's been a problem with

1 mechanical parts. In fact, it's quite scary that
2 airplane parts are counterfeited and don't meet FAA
3 standards. It's been a high priority issue for the
4 Chamber.

5 We're spending millions of dollars to try and
6 make the public aware of this problem and to let
7 them know to be careful not to buy counterfeit
8 goods and to put pressure on foreign countries that
9 don't police the manufacture of counterfeit goods
10 in those countries. We've also worked very closely
11 with the Patent and Trademark Office, and I believe
12 we even have an agreement with them to help promote
13 the problem of product counterfeiting.

14 Q. Other than the United States Patent and
15 Trademark Office, does the Chamber work with other
16 police or government agencies in this connection?

17 MS. PIETRINI: Objection. Leading.

18 A. Yes, it has. It has worked with a number of
19 police forces, including in New York City and LA.
20 They've also worked with the Customs Service to try
21 and make sure there's better policing of products
22 coming into the United States from overseas.

1 Q. Does the U.S. Chamber have any programs at
2 schools with regard to education on counterfeiting?

3 MS. PIETRINI: Objection. Leading.

4 A. Yes, it does. That is part of this overall
5 program. They've in fact even set up, I believe, a
6 contest using the Weekly Reader, which is a
7 publication sent to elementary school students in
8 which the problems of product counterfeiting are
9 highlighted.

10 Q. Is the U.S. Chamber identified in those
11 programs?

12 A. Yes, it is.

13 Q. Does the U.S. Chamber have programs with any
14 other organizations to educate the public on
15 counterfeiting?

16 A. I'm sure it has worked with a whole variety
17 of organizations. I can't specify exactly who they
18 are. They've testified before Congress on the
19 problem many times, and they are working with many
20 organizations. Many trade associations are
21 obviously concerned about this, where their
22 particular trades are having a problem, like the

1 Motion Picture Association, I know they've worked
2 with them and the Recording Industry Association
3 and the Pharmaceutical Manufacturers Association.
4 Those for sure I know they've worked with on that
5 problem.

6 Q. Now, without regard to counterfeiting, just
7 generally, has the U.S. Chamber had radio or
8 television programs produced for it?

9 MS. PIETRINI: Objection. Leading.
10 Lacks foundation.

11 A. Well, certainly for about a 20 year period
12 the Chamber was heavily involved in producing its
13 own television programs. We actually built a TV
14 studio at great expense in our headquarters
15 building here in Washington, where we set up
16 something we called BizNet, which was a business
17 television network.

18 We produced both a daily business news show
19 that was broadcast each morning, I can't remember
20 the time, maybe six or seven o'clock in the
21 morning, on ESPN before it became all sports, and
22 we did a weekly syndicated panel discussion of

1 business issues called It's Your Business. That
2 network and those programs were shut down in 1997,
3 I recall.

4 Q. Are there any radio programs or announcements
5 which are produced by or for the U.S. Chamber?

6 MS. PIETRINI: Objection. Leading.
7 Lacks foundation.

8 A. Yes. As part of this BizNet organization, in
9 addition to television, they also did television
10 and radio programs, and there's still a syndicated
11 radio program usually featuring the Chamber's
12 president, Tom Donohue, that's produced and put out
13 by -- there's a network of radio stations that pick
14 up and broadcast that show.

15 Q. Do you have any personal knowledge if those
16 are actually broadcast on the radio?

17 A. Yes, and that knowledge is derived from
18 contracts I reviewed in my general counsel's role
19 with radio programs to produce it, and I have
20 personally heard those broadcasts on some local
21 Washington radio stations.

22 Q. And do you have personal knowledge of the TV

1 programs you earlier identified, the weekly and the
2 daily programs?

3 A. I do. Unfortunately, they used to try and
4 make me often appear as an expert. I spent a lot
5 of time with that, unfortunately, and I say
6 "unfortunately" because I spent more time at that
7 than I cared to. And we at the general counsel's
8 office, particularly the weekly show, we had to
9 have an attorney at that because they were taped
10 shows, to make sure there were no copyright
11 problems, no liability problems, the sort of things
12 attorneys would normally be concerned about in
13 reviewing a television production.

14 Q. Now, I believe you identified earlier that IP
15 was one of your areas of responsibility. Do you
16 recall that?

17 A. Yes, I do.

18 Q. What do you mean by IP?

19 A. Intellectual property issues. I'll make very
20 clear on this record that I do not consider myself
21 an intellectual property lawyer. I have no great
22 expertise in the area. But like any large

1 organization, trademark and copyright issues would
2 constantly arise, and we are asked to deal with
3 those issues. I don't recall that we ever had a
4 patent issue, and that's of course not surprising
5 considering the nature of the organization.

6 Q. Did the U.S. Chamber monitor the market to
7 see if others were using its marks?

8 MS. PIETRINI: Objection. Leading.

9 A. Yes. We had a well established procedure, or
10 practice, which is probably a better word than
11 procedure, within the Chamber that whenever any
12 member of the Chamber staff saw someone using our
13 marks or marks very similar to ours that they would
14 notify the general counsel's office either by memo
15 or phone call or whatever.

16 Various office employees would receive
17 complaints from members at times. Sometimes we had
18 a problem with a company using the Chamber's logos
19 or signs in advertising, which we did not permit.
20 The practice was that, once we were notified, the
21 general counsel's office would take the
22 responsibility, if we thought the use was

1 problematic, to notify the offender that we wanted
2 them to cease and desist from that.

3 Sometimes we did that, our own counsel in
4 house would do that, or, depending on the
5 sophistication of the issue and time, we would use
6 outside counsel to send out letters and pursue it.

7 Q. Did the marks that you policed include the
8 U.S. Chamber of Commerce?

9 MS. PIETRINI: Objection. Leading.

10 A. Of course. That would be the prime mark, and
11 there were certainly many others, including, as I
12 mentioned earlier, BizNet. That one was probably
13 the most infringed mark of all of ours. It just
14 seemed to be a catchy name, and particularly as the
15 internet started to grow and as radio and
16 television grew and there were additional cable
17 stations, BizNet, it seemed everybody wanted to use
18 that phrase, which we had registered and owned and
19 were involved in constantly policing the use of.

20 Q. Were there any circumstances that came to the
21 attention of the legal department where contact
22 from a third party, not an employee of the U.S.

1 Chamber of Commerce, would indicate that they had a
2 question about whether or not another organization
3 was affiliated with the U.S. Chamber?

4 MS. PIETRINI: Objection. Leading.
5 Lacks foundation.

6 A. Certainly. You'd get those kinds of
7 questions, particularly if they had "U.S. Chamber"
8 in the name. We'd ask is this organization one of
9 yours, you know, or someone who's using our logo,
10 you know, is this a Chamber member, is this part of
11 the Chamber. Certainly those kinds of
12 circumstances arose with some frequency.

13 Q. Did some of those circumstances indicate that
14 the party being inquired about was not in fact
15 affiliated with the U.S. Chamber?

16 MS. PIETRINI: Objection. Leading.

17 A. Yes, certainly. That certainly arose with
18 the instant case. It arose with a group called the
19 U.S. Women's Chamber of Commerce. I'm trying to
20 think of others. The Chamber had sort of a
21 stylized eagle in a circle that said The Spirit of
22 Enterprise across the top. That phrase was abused.

1 Sometimes the logo was used by other organizations,
2 and we would police that.

3 So yes, between the Chamber and its logo it
4 was fairly common to receive complaints or
5 inquiries about those kinds of abuses.

6 Q. What was the practice of the U.S. Chamber in
7 terms of responding to those parties inquiring?

8 A. Well, occasionally of course they were
9 legitimate uses either pursuant to a license or
10 some prior agreement, and we would notify those who
11 complained and send them a letter or call them and
12 tell them it's legitimate, it's not legitimate.
13 Once we were aware of an illegitimate use we would
14 certainly write to the offending party and ask them
15 to cease and desist from using the marks.

16 Q. If they did not cease and desist what would
17 the Chamber do?

18 A. Well, usually we'd go to outside counsel,
19 because we considered that both beyond the time we
20 had, because we covered so many different issues,
21 and because of, as I mentioned, our lack of
22 expertise beyond the real basics in intellectual

1 property law. We would use outside counsel to
2 write letters, and sometimes the people who misused
3 those marks would respond more quickly to, if you
4 will, a threat from outside counsel. I think they
5 took us a little more seriously. It was
6 unfortunate they did that, but I understand it.

7 I should also mention that this became a
8 particular problem with the growth of the internet.
9 The use of the name U.S. Chamber of Commerce in
10 URLs, uniform resource locators, I believe it is,
11 the internet address of companies, that problem
12 grew by leaps and bounds as the internet became
13 more and more popular. There were many more
14 infringements particularly of "U.S. Chamber" and
15 various forms of that name.

16 I remember there was a U.S. Chamber of
17 eCommerce and U.S. Chambers of Commerce and so on,
18 people trying to take advantage. They thought it
19 was catchy, and some of them I think intentionally
20 wanted to be confused with us. The problem grew
21 dramatically in the '90s, the late '90s and early
22 2000s, as the internet grew.

1 Q. Are you familiar with an issue involving the
2 URL uschambers.com?

3 MS. PIETRINI: Objection. Leading.

4 A. I certainly am. There was a fellow, and I
5 remember he was in Hilton Head, South Carolina, and
6 I remember that because my brother lives there,
7 named Skip Hoagland, and I dealt with this issue
8 personally. He registered the URL uschambers.com.
9 His concept was to provide links to state and local
10 chambers all over the country.

11 We wrote to him and told him to cease and
12 desist, and he then decided he wanted to try and do
13 business with us. He was a small operator and we
14 had no interest in doing business with him; we just
15 wanted him to cease and desist from using the name.
16 I had many frustrating phone conversations with
17 him, and I sent him many letters over quite some
18 period of time trying to get him to stop, and it
19 finally took some fairly serious threats of
20 litigation from our outside counsel before he
21 finally went away and abandoned that name.

22 Q. Do you know who owns the URL uschambers.com

1 today?

2 A. I think the U.S. Chamber does, the last I
3 knew. I've not checked that in quite some time, but
4 I believe the U.S. Chamber owns it.

5 Q. Are you familiar with the URL uschamber.net?

6 A. Yes. If my recollection is correct, it was
7 the Arab American Chamber of Commerce that tried to
8 register that URL. We wrote to them, contacted
9 them, and said, you know, you can't use that, we
10 believe that infringes our mark, U.S. Chamber of
11 Commerce, and we asked them to cease and desist
12 from using it.

13 Q. Do you know who owns that URL today?

14 A. The U.S. Chamber.

15 Q. You've already mentioned the U.S. Chamber of
16 eCommerce. Do you recall that?

17 A. Yes, I do recall mentioning it.

18 Q. What was that about?

19 A. That was, I believe -- I remember someone
20 started using it, and I'm now blanking on who it
21 was that was using it. I remember the mark was
22 being used. I know that we wrote to the

1 organization that had registered the mark, and I
2 believe they also abandoned it, but I can't now
3 recall specifically the name of the group that was
4 using it.

5 Q. Are you familiar with the use of the U.S.
6 Chamber name in connection with a mapping service?

7 MS. PIETRINI: Objection. Leading.
8 Lacks foundation.

9 A. I am. There was a group that incorporated
10 itself as US Chamber Maps, and they'd actually been
11 in business before they adopted that name. If
12 you've ever gone into particular resort communities
13 where you can go in the local chamber and get a map
14 and all the local businesses are listed on that map
15 and they're keyed by a number or letter to a
16 particular place on the map so someone visiting
17 that area, for example, can find the local
18 McDonald's or the local gas station or the local
19 fishing guide and so on, they would go in an area,
20 they'd go to the local chamber and say, we want you
21 to endorse us as a provider of maps in your area,
22 we will sell space on these maps to the local

1 businesses, we'll pay a fee to the local chamber to
2 do this.

3 That was all well and good, but there were two
4 problems. One was the use of our name, which the
5 U.S. Chamber objected to and wrote to them about,
6 but it turned out these guys were also fraudulent
7 operators because would take money from all the
8 local businesses in these communities and then they
9 would never provide the maps.

10 And not only were we concerned about the
11 misuse of our name, but all the local and state
12 chambers were concerned because their members were
13 being ripped off by this company that purported to
14 be there on behalf of the local chamber, and of
15 course then they would all be angry at the local
16 chamber, so the local chambers were very upset.

17 Ultimately the principals of that
18 organization, and we did a great deal of work, we
19 worked with the Postal Service, we worked with some
20 local police forces, and ultimately the two people
21 that were behind that were arrested and thrown in
22 jail for fraud.

1 Q. Did the U.S. Chamber of Commerce receive any
2 complaints from local chambers about this?

3 A. Dozens of complaints. And in fact, to make
4 others aware not to do business with the company,
5 we published several articles in our newsletter
6 alerting local and state chambers not to do
7 business with an outfit calling themselves US
8 Chamber Maps because many other chambers and their
9 members had been defrauded by them.

10 Q. Have you ever heard of the Federal Chamber of
11 Commerce?

12 MS. PIETRINI: Objection. Leading.

13 A. Yes, I have. There was a group which
14 referred to themselves both as the Federal Chamber
15 and the Regional Chamber of Commerce. Again, what
16 they would do is they would send businesses what
17 looked like an invoice, a renewal invoice, and it
18 would say membership, Federal Chamber of Commerce,
19 and some of them said membership, Regional Chamber
20 of Commerce.

21 Their intent was deceptive. Their intent was
22 to make businesses think that it was their local

1 chamber that was sending them an invoice, and by
2 using Federal Chamber we believed their intent was
3 to make a business think it was the U.S. Chamber
4 asking for renewal of its membership.

5 There was no there there, and they didn't do
6 anything. They would send out the invoices, and of
7 course a secretary or receptionist sees this,
8 thinks it's the renewal of their local Chamber of
9 Commerce membership, sends it in for payment, and
10 the payment would go out. The address was, I
11 think, 2020 Pennsylvania Avenue in Washington, and
12 we didn't know what it was until we walked down
13 there literally a few blocks from our office and
14 discovered it was a Mail Boxes, Etc., and all they
15 had was a mailbox.

16 We obviously had written to them asking them
17 to cease and desist, and trademark infringement was
18 the least of our concerns because they were
19 outright fraud artists, and we worked with the
20 Postal Service and some local police authorities to
21 put these people out of business, and ultimately
22 they did go out of business.

1 Q. Have you ever heard of the US-USSR Chamber?

2 MS. PIETRINI: Objection. Leading.

3 A. I have. This was an organization that tried
4 to register that name, US-USSR Chamber of Commerce.
5 We contacted them and told them that we owned the
6 name U.S. Chamber of Commerce and we didn't want
7 them to use it, and shortly thereafter they
8 abandoned the use of that name.

9 Q. Earlier in your testimony you brought up the
10 U.S. Women's Chamber of Commerce. Do you recall
11 that?

12 A. I do recall bringing that up, yes.

13 Q. When did you first hear of the U.S. Women's
14 Chamber of Commerce?

15 A. I would have to say it was probably late
16 2001, early 2002.

17 Q. How did you learn of them?

18 A. I don't remember specifically. I think
19 someone called us and said have you ever heard of
20 this group, do you know what they are and what
21 they're doing. Now, I was concerned with the
22 similarity to our name and was afraid of the

1 likelihood of confusion. You know, now that I
2 think about it, I think it may have actually been
3 our outside counsel at the time, a fellow named
4 Lawton Rogers, who first brought that, or his
5 associate, that first brought that to our
6 attention.

7 Q. What did the U.S. Chamber do after it learned
8 of this?

9 MS. PIETRINI: Objection. Leading.

10 A. Our outside counsel wrote them a letter
11 asking them to cease and desist from using that
12 name.

13 Q. Do you recall if there was a trademark
14 application in that same name?

15 A. There was a trademark application in that
16 name, and it's my understanding that the trademark
17 application was rejected by the examiner as being
18 too easily confused with the U.S. Chamber of
19 Commerce name.

20 Q. Do you recall what happened to that
21 application?

22 A. I do. It was rejected by the examiner as

1 being too likely to be confused, and ultimately --
2 there were two steps, and the procedure of the
3 Trademark Office strikes me as exceptionally
4 complicated. I don't profess to fully understand
5 it, but there was a two-step process, and in both
6 steps that application was rejected.

7 They didn't appeal that, which, as I
8 understand it, constituted a voluntary abandonment
9 of the name. Now, the problem for us what that they
10 continued to use the name even after the
11 abandonment of their filing to use the name, and we
12 wrote to them again and asked them to cease and
13 desist, stating that we thought they had abandoned
14 it.

15 Q. Did you file a lawsuit against the U.S.
16 Women's Chamber of Commerce?

17 A. No, we didn't. I subsequently learned that
18 their name went on the supplemental register and
19 that they kept using it and I think use it to this
20 day. But we learned -- or it was at that time, and
21 the point where we wrote them the second time, I
22 didn't give a time frame, but that was in

1 approximately the first half of 2003.

2 By that point we were engaged in the
3 litigation in which I'm testifying today, and
4 frankly we're an organization. We don't have -- I
5 wish the legal department had an unlimited budget,
6 it didn't, and we wanted to frankly see what the
7 outcome of this litigation would be before pursuing
8 it, but I think it would be fair to say that,
9 depending on the outcome here, we could still
10 pursue litigation against the Women's Chamber.

11 Q. You mentioned the litigation that you're
12 involved in here, that you're testifying in here
13 today. Do you understand this to be between the
14 U.S. Chamber of Commerce on the one side and the
15 U.S. Hispanic Chamber of Commerce and the U.S.
16 Hispanic Chamber of Commerce Foundation on the
17 other side?

18 A. I do.

19 Q. When was the first time you'd heard of the
20 U.S. Hispanic Chamber of Commerce?

21 A. Again, it probably was 2001 or so, the
22 beginning of this decade, close to the beginning of

1 this decade.

2 Q. Had you heard of the U.S. Hispanic Chamber of
3 Commerce Foundation?

4 A. I had.

5 Q. When was the first time you heard of them?

6 A. I think we were notified by our then
7 intellectual property lawyer I mentioned before,
8 Lawton Rogers. He had an associate, then partner,
9 Mark Comtois was his name, and I believe they first
10 notified us that there had been an application made
11 at the Trademark Office to register our mark for
12 the U.S. Hispanic Chamber of Commerce Foundation.

13 Q. How did you learn of the U.S. Hispanic
14 Chamber of Commerce?

15 A. Well, you know, we started to ask questions
16 once we were informed that there'd been a filing of
17 the mark, and we looked into it more deeply to find
18 out who this organization was, what did they do,
19 what was their purpose, et cetera, et cetera.

20 MR. COLBERT: I have nothing further for
21 the witness at this time. I'll tender the witness
22 at this time to you.

1 MS. PIETRINI: Can we take a ten minute
2 break, please?

3 MR. COLBERT: All right.

4 (Recess.)

5 EXAMINATION BY COUNSEL FOR APPLICANT

6 BY MS. PIETRINI:

7 Q. Mr. Bokat, when did you retire from the U.S.
8 Chamber of Commerce?

9 A. Effective March 31, 2007.

10 Q. What's your home address?

11 A. 7105 West Greenvale Parkway, Chevy Chase,
12 Maryland, 20815.

13 Q. What did you do to prepare for your testimony
14 today?

15 A. I met with counsel.

16 Q. Which counsel?

17 A. The three people in this office, Mr. Kane,
18 Mr. Colbert, and Ms. Richmond.

19 Q. Was anyone else present during your meeting
20 with those counsel?

21 A. No.

22 Q. Did you read the testimony of Karen Elzey

1 before --

2 A. No.

3 Q. You need to let me finish my question. Did
4 you discuss Ms. Elzey's testimony with anyone
5 before your testimony today?

6 A. No.

7 Q. What about the testimony of Lucia Olivera?
8 Did you discuss her testimony with anyone before
9 today?

10 A. I believe actually Ms. Richmond and I
11 discussed that, and I believe I might have
12 discussed in very general terms that with Mr.
13 Colbert.

14 Q. Right now you're not employed as an attorney
15 for the U.S. Chamber of Commerce. Correct?

16 A. I'm not employed. That is correct.

17 Q. And then Christina Nuche, did you discuss her
18 testimony with anyone?

19 A. No.

20 Q. What about Rita Perlman? Did you discuss her
21 testimony with anyone?

22 A. Only the fact that she had testified and how

1 it went, but not specifics.

2 Q. And who did you have that discussion with?

3 A. Mr. Colbert and Mr. Kane and Ms. Richmond.

4 Q. What about Bradley Peck? Did you discuss his
5 testimony with anyone?

6 A. Only that he had testified and how it went in
7 general terms, not any specifics.

8 Q. Again, with Mr. Colbert, Mr. Kane and Ms.
9 Richmond?

10 A. Yes.

11 Q. And Ms. Patricia Cole, did you discuss her
12 testimony with anyone?

13 A. No.

14 Q. Were you involved while you were employed at
15 the U.S. Chamber of Commerce in collecting
16 documents to provide in this case?

17 A. Yes. My recollection is vague, but I think
18 that I was involved in some limited manner.

19 Q. What was your involvement? What did it
20 entail?

21 A. When discovery requests came from the counsel
22 for the Hispanic Chamber I would meet with Ms.

1 Richmond, who had primary responsibility for that,
2 and we'd talk about what -- I read the requests,
3 and we talked about what we might have that would
4 be responsive.

5 Q. Were you involved in producing documents in
6 this case that you believed would be helpful for
7 the U.S. Chamber's position?

8 MR. COLBERT: I'll object to the line of
9 questioning as being improper discovery.

10 A. Yes.

11 Q. And you talked in your direct about certain
12 policing activities that the U.S. Chamber of
13 Commerce took. Correct?

14 A. Yes.

15 Q. Did you produce any documents relating to
16 those policing activities in this case?

17 MR. COLBERT: Object to the form of the
18 question as vague.

19 Q. Do you understand my question?

20 A. Repeat the question, please.

21 Q. Did you produce any of those policing
22 documents -- let me back up. Did you produce any

1 documents relating to those policing activities
2 that you described in your direct testimony to us
3 in this case?

4 MR. COLBERT: Same objection.

5 A. I don't recall.

6 Q. But you understood the question?

7 A. I understand the question completely, and I
8 don't recall. It would have been many months ago
9 that this was done, and they may well have been,
10 they may not have been. I just don't recall at
11 this point.

12 Q. In your responsibilities at the U.S. Chamber
13 of Commerce do you participate in any manner for
14 fundraising or did you participate in any manner
15 for fundraising for the U.S. Chamber of Commerce?

16 A. Yes, I did.

17 Q. And what was your involvement?

18 A. Well, for the Chamber itself, Tom Donohue is
19 president of the Chamber, and he believes it's the
20 responsibility of every officer to help fund the
21 organization. I visited companies, normally the
22 legal departments of companies, and asked them to

1 provide monetary support or become a member of the
2 Chamber if they were not a member, and I did that
3 for many years.

4 Q. Did you visit any companies that were owned
5 by Hispanics?

6 A. Not that I can recall, no.

7 Q. Are you aware of any fundraising that the
8 U.S. Chamber received from Hispanic owned
9 businesses?

10 MR. COLBERT: Objection. Lack of
11 foundation.

12 A. I certainly have seen companies that had
13 Hispanic names or that produced Hispanic products.
14 In the course of my duties I would see those names,
15 but I had no personal knowledge whether or not they
16 were actually Hispanic owned.

17 Q. As you sit here today, can you identify any
18 of those companies for us?

19 A. Goya Foods, I think, was one that I recall.

20 Q. Any others?

21 A. Not that are coming to mind at this point,
22 no.

1 Q. And in your responsibilities at the U.S.
2 Chamber did you participate in any manner in
3 collecting membership fees?

4 A. Collecting in the sense -- could you tell me
5 what you mean by collecting? Do you mean literally
6 picking up a check or money?

7 Q. Well, let me back up. Did you participate in
8 any manner when you were at the U.S. Chamber of
9 Commerce in increasing the membership at the U.S.
10 Chamber of Commerce?

11 MR. COLBERT: Objection. Vague.

12 A. Increasing the number of members?

13 Q. Correct.

14 A. Well, sure, because I was out soliciting
15 people who were not then members of the Chamber of
16 Commerce to become members, so by definition I
17 think I already stated that.

18 Q. We talked about fundraising.

19 A. Right.

20 Q. Is that the same thing, fundraising
21 activities versus increasing the membership?

22 A. There are two ways you can raise money. You

1 can raise money from an existing member and ask
2 them to give you more money. You can go to
3 somebody who's a non-member and ask them to become
4 a member, and that raises money also. I think I
5 alluded to both before. So if someone's a
6 non-member it would increase the number of members
7 and not just the funds.

8 Q. So in terms of when you went to go -- let's
9 break it up because I didn't understand that to be
10 your testimony. When you went to go visit existing
11 members for fundraising activities, were there any
12 Hispanic owned or Hispanic based businesses that
13 you visited, existing members?

14 A. Not that I recall.

15 Q. And then for non-members, where you were
16 trying to solicit memberships, did you visit any
17 Hispanic owned or Hispanic based businesses?

18 A. Not that I recall.

19 Q. You also talked about, and I'm going to use
20 the initials because it's just too many words, the
21 National Chamber --

22 A. Litigation Center. The National Chamber

1 Litigation Consider, or NCLC for short.

2 Q. The NCLC. I'll try and use that.

3 A. That's good.

4 Q. Did you do any fundraising for the NCLC while
5 you were employed there?

6 A. I did extensive fundraising for NCLC
7 throughout my entire career.

8 Q. The fundraising that you talked about earlier
9 with me, was that just for the U.S. Chamber or for
10 the U.S. Chamber plus the NCLC?

11 A. I answered it solely for the U.S. Chamber
12 because that was the question that was posed.

13 Q. The same question with respect to the NCLC.
14 What was your involvement in fundraising for that
15 organization?

16 A. Well, as the senior officer in charge of the
17 day-to-day operation, it was my responsibility to
18 make sure that it received the funds it needed to
19 operate, and so I both oversaw and engaged in
20 personally approaching mostly general counsels to
21 get the support for the NCLC.

22 Q. The general counsels that you approached on

1 behalf of NCLC, were any of those counsels of
2 Hispanic based businesses?

3 MR. COLBERT: I'm going to object to this
4 whole continuing line of interrogation as beyond
5 the scope of direct.

6 A. Yes.

7 Q. Can you name those for me?

8 A. I know there were several. I believe that
9 Goya Foods was one of them because I knew their
10 general counsel through some in-house counsel
11 activities. I can't recall his name at this time.
12 There may have been a couple of others, and I do
13 not recall the names of the companies at this time.

14 Q. What percentage of the general counsels that
15 you visited on behalf of NCLC were of Hispanic
16 based businesses?

17 MR. COLBERT: Objection. Same objection.

18 A. A very small percentage.

19 Q. Very small would be what, less than 5
20 percent?

21 A. Oh, yeah, sure.

22 Q. 1 percent? 2 percent?

1 A. Maybe 1. You're talking about a 30 year
2 career here visiting dozens and dozens, hundreds of
3 companies and trying to recall mentally to make
4 that calculation is an impossibility, so I really
5 can't answer that, but it was small.

6 Q. And in terms of the NCLC, did the NCLC put on
7 any programs for general counsels?

8 A. Yes, on occasion. That was not a principal
9 responsibility of the organization. Early in its
10 existence we did some seminars for general
11 counsels.

12 Q. Were any of those programs conducted in
13 Spanish?

14 A. No.

15 Q. Were any of those programs conducted and
16 directed towards Hispanic based businesses?

17 A. No.

18 Q. And I think you said the NCLC filed
19 litigation on behalf of certain businesses.

20 MR. COLBERT: Objection to the
21 characterization of his testimony.

22 A. We rarely filed on behalf of a particular

1 business. We were looking for cases that had a
2 broad appeal to the whole business community. It
3 might be a challenge to an OSHA regulation or a
4 challenge to an EPA regulation that has an impact
5 on a broad cross-section of the business community.

6 Q. So was it challenges to actual legislation or
7 proposed legislation?

8 A. Well, it would be almost impossible to
9 challenge proposed legislation. It would be
10 federal government or state regulations, federal
11 government or state statutes, but it would be hard
12 to challenge something that was just proposed.

13 Q. Did the NCLC ever file a case on behalf of a
14 Hispanic based business?

15 MR. COLBERT: Objection to the form of
16 the question.

17 A. No, but we rarely ever filed on behalf of any
18 particular business. These were generally done in
19 the name of the Chamber of Commerce of the United
20 States versus whomever it might be.

21 Q. I understand. That's one component. The
22 other component is that you filed amicus briefs.

1 Right?

2 A. That's correct.

3 Q. And speaking of the NCLC, did the NCLC ever
4 file an amicus brief on behalf of a Hispanic based
5 business?

6 MR. COLBERT: Objection to the form of
7 the question.

8 A. Let me ask for clarification. Do you mean
9 where the party supported was a Hispanic based
10 business?

11 Q. Correct.

12 A. That's the question?

13 Q. Yes.

14 A. I don't recall that we ever did.

15 Q. And what about an amicus brief where a
16 Hispanic based business was a party to the case,
17 whether you were supporting the position or not.

18 A. There may well have been. You have to
19 understand that until the time I retired NCLC had
20 filed amicus briefs in well over a thousand cases.
21 I can't recall them all. I certainly do not recall
22 all the parties in those cases. Some of those

1 cases involved large numbers of parties. They
2 could be cases that involved 30 or 40 different
3 companies that would be on the caption of the case
4 because these were usually major actions that a
5 very large portion of the business community had an
6 interest in for one reason or another.

7 Some of these cases, for example, we filed
8 some against OSHA that dealt with OSHA regulations
9 that impacted practically every business in the
10 country although they may not have had their name
11 on the caption of the case. I can't recall if
12 there was one where there was a Hispanic based
13 business that was named, but there very well could
14 have been.

15 Q. But you don't know one way or the other?

16 A. I don't.

17 Q. Does the National Chamber Litigation Center
18 put on any conferences, or did it put on any
19 conferences on while you were employed there?

20 A. I think you asked me that question before,
21 and my answer was yes, that we had put on some
22 conferences early on in its existence, but there

1 have not been any put on in recent years.

2 Q. Actually, my question was whether you had put
3 on any programs or seminars, and the second
4 question was conferences, because there has been a
5 distinction made by other witnesses, but if you're
6 throwing everything into the same thing, that's
7 fine.

8 MR. COLBERT: Objection. Lack of
9 foundation and vague.

10 A. I don't make that kind of distinction in my
11 head as to the kinds of programs we did. These
12 were topics of general interest to counsel
13 primarily or to companies, but I threw them -- in
14 answering your first question I threw them all in
15 the same bucket.

16 Q. And with respect to the U.S. Chamber of
17 Commerce, have you ever attended any programs,
18 seminars or conferences put on by the U.S. Chamber
19 of Commerce?

20 A. Oh, absolutely.

21 Q. In any of those conferences, seminars or
22 programs that you attended, were any of them

1 directed towards Hispanic based businesses?

2 A. I certainly do not recall any that were aimed
3 solely at Hispanic based businesses. There
4 certainly were issues that would be of concern to
5 Hispanic as well as other businesses.

6 Q. But nothing specifically directed to Hispanic
7 based businesses?

8 A. Not that I can recall.

9 Q. During your tenure at the U.S. Chamber of
10 Commerce, did that organization do anything to
11 specifically target Hispanic based businesses?

12 MR. COLBERT: Objection. Vague.

13 A. I believe, yes, that it did. It had a
14 program called Access America. There was a lady
15 who was hired to run that whose name was Rita -- I
16 am now blanking on her last name. I can picture
17 her. She was an African American woman who was
18 hired to run that program, she was a Chamber vice
19 president, and I believe she actually hired a
20 Hispanic deputy to help her run that program. Its
21 purpose was outreach to all members of the minority
22 community to get them more involved in the Chamber,

1 Hispanic, African American, and so on.

2 Q. Access America, when was it started?

3 A. I'm a little hazy. I'd say probably around
4 2000, something like that, 2001.

5 Q. It didn't exist when you started at the
6 Chamber in 1977?

7 A. No.

8 Q. And did it exist when you became a vice
9 president of the NCLC in 1982?

10 A. No.

11 Q. And did it exist when you became an executive
12 vice president of the NCLC in the late 1990s?

13 A. Probably not. It was probably shortly after
14 that, but I don't recall the exact date that it was
15 formed.

16 Q. Is that program still in existence at the
17 United States Chamber of Commerce?

18 A. I believe it is.

19 Q. And do you believe it's targeting all
20 minorities or Hispanics in particular?

21 MR. COLBERT: Objection to foundation.
22 Objection as to beyond the scope of direct.

1 Objection to vague.

2 A. I believe it appeals to all minorities, but
3 certainly Hispanics were one of the groups
4 specifically targeted by that program.

5 Q. Were you involved in any way as general
6 counsel or as part of your responsibilities at NCLC
7 with the special councils and task force that the
8 U.S. Chamber of Commerce has?

9 MR. COLBERT: Objection. Foundation.

10 A. Special councils?

11 Q. Yes, special councils and task force.

12 MR. COLBERT: Objection. Beyond the
13 scope of direct.

14 A. I'm not sure I fully understand the question.
15 The Chamber has a number of councils and task
16 forces in a generic sense. There are a number of
17 -- they set up special task forces and councils to
18 address all kinds of issues, so I'm unclear whether
19 you're referring to them generically or to one
20 specific one, but certainly at various aspects of
21 my job I would interact with the Chamber's task
22 forces and councils.

1 Q. Those task forces and councils, were any of
2 them set up for a specific geographic area?

3 MR. COLBERT: Objection. Beyond the
4 scope of direct. Objection. Vague.

5 A. I'm trying to recall. It's entirely
6 possible. I can't recall at this time.

7 Q. Can you recall any that were set up, any
8 special council or task force that was set up for
9 any countries in Latin America?

10 MR. COLBERT: Objection. Beyond the
11 scope of direct. Objection. Improper discovery.

12 A. The Chamber in their international department
13 had several Latin American experts, speakers fluent
14 in Spanish that worked with those areas. They
15 worked with a number of -- I don't know if they
16 were technically called task forces and councils,
17 but they certainly worked with a group of chambers,
18 American Chambers of Commerce in Latin America, the
19 AACCLA, and they had annual meetings often at the
20 Chamber. We had a fellow named David Hirschman,
21 and, although he was not Hispanic, he was born in
22 Latin America and spoke Spanish fluently, he would

1 often visit there, and we had several other fluent
2 Spanish speakers who worked very closely with the
3 chambers in Latin America.

4 I'd mentioned that I just returned from a
5 cruise to Alaska, and on that cruise was a fellow
6 who had worked closely with Mr. Hirschman and
7 traveled to Latin America with him to visit
8 countries there and very much appreciated Mr.
9 Hirschman's knowledge of the countries and his
10 fluency in Spanish.

11 Q. These were part of the activities that you
12 talked about in your direct testimony as the
13 international activities of the U.S. Chamber of
14 Commerce?

15 A. Yes. They have an entire division called the
16 International Division.

17 Q. You also testified as to the National Chamber
18 Foundation on your direct testimony. You referred
19 to that as charitable corporation.

20 A. It's a 501(c)(3) corporation, which is under
21 the tax laws a charitable entity. Contributions
22 are deducted as a charitable contribution, and its

1 primary goal is research and education.

2 Q. Has any of that research that was conducted
3 by the National Chamber Foundation been directed
4 towards Hispanic based businesses?

5 A. I don't know. I can't recall.

6 Q. And you had mentioned previously the AACCLA.
7 What does that stand for again?

8 A. It's the American Association of Chambers of
9 Commerce of Latin America, I believe.

10 Q. And is that a divisional organization of the
11 U.S. Chamber of Commerce?

12 A. It's a group that is supported by the U.S.
13 Chamber and it's a separate entity, but it's
14 closely supported by them. One of their annual
15 meetings is held at the Chamber each year, and the
16 Chamber has a staffer, at least one staffer, who
17 spends their time supporting that group and
18 interacting with that group. It's not officially a
19 division or part of the Chamber.

20 Q. Is it one of the affiliates that you
21 discussed in your direct testimony?

22 A. No. It's not technically an affiliated

1 corporation, but we probably spend as much time,
2 effort and money as we do with some of the
3 other affiliates.

4 Q. And when did the U.S. Chamber of Commerce
5 start its support of the AACCLA?

6 MR. COLBERT: Continuing objection.
7 Beyond the scope of direct.

8 A. I don't know. Very long ago, and it may even
9 have predated my arrival 30 years ago at the
10 Chamber.

11 Q. But you don't know when it first started?

12 A. I don't know. It has had a relationship or
13 an involvement with the Chamber for a very long
14 time. It's certainly in excess of 20 years, and it
15 may have predated my arrival at the Chamber in
16 1977.

17 Q. You mentioned something about the National
18 Chamber Foundation and research and then you said
19 seminars. What did you mean by that?

20 A. Well, they conduct research. They contract
21 with researchers. They have their own staff that
22 does some research on various legislative issues,

1 but they also conduct huge numbers of seminars each
2 year on a variety of topics, tourism and travel.
3 Counterfeiting I mentioned is an issue they were
4 concerned about. They hold a whole variety of
5 educational conferences and seminars.

6 Q. Are any seminars conducted specifically, and
7 this is by the National Chamber Foundation, are any
8 seminars conducted specifically for Hispanic based
9 businesses?

10 MR. COLBERT: Objection. Vague.

11 A. I don't know. They might. I just don't
12 know. They were at one point doing over a hundred
13 conferences a year, and I was aware they were doing
14 that many conferences, but I certainly didn't pay
15 close attention. In view of the breadth of my
16 responsibilities, knowing the details of that was
17 just beyond what I could have the time to do.

18 Q. Are you aware of any seminars that were
19 conducted by the National Chamber Foundation for
20 Hispanic based businesses?

21 MR. COLBERT: Objection, vague.

22 Objection, beyond the scope.

1 A. No.

2 Q. In your direct testimony you said that you
3 thought that the U.S. Chamber of Commerce was well
4 known in the business community.

5 A. Yes.

6 Q. And one of the things that you said, one of
7 the reasons was that members had testified before
8 Congress. That was one of the bases that you
9 thought that made it well known.

10 A. No. I said Chamber staff had testified, but
11 members have as well for the Chamber. Staff often
12 testifies, and that testimony is broadcast on
13 C-SPAN. It receives a great deal of publicity in
14 the press. What happens in Congress is covered
15 nationally by numerous news media, and so when the
16 Chamber is working on an important issue, and one
17 issue is the immigration issue, I've personally
18 heard the Chamber mentioned in stories on the
19 immigration bill, both broadcast and in print
20 media. I've heard the Chamber mentioned many, many
21 times in recent days.

22 Q. Does the U.S. Chamber receive recordings of

1 any of that testimony before Congress?

2 A. I don't know if they receive recordings.
3 They certainly often receive transcripts of that
4 testimony.

5 Q. And have examples of any of those transcripts
6 been produced to us in this case?

7 A. I have no idea.

8 Q. Were you asked to produce any such
9 transcripts to us in this case?

10 A. I was not personally, no.

11 Q. And then you talked about clips, that you
12 received certain clips in connection with your job
13 as general counsel of the U.S. Chamber of Commerce.

14 A. Well, all the senior -- actually, I think the
15 entire staff now receives by e-mail each day the
16 major clips, which are sent out by e-mail. The
17 officers, myself included, received a printed copy
18 every day, and had for many years.

19 Q. Did you collect or direct any of your staff
20 to collect any of those clips to produce to us in
21 this case?

22 A. I don't recall. That may well have been. If

1 they were responsive to your discovery requests,
2 I'm sure they were produced. They may not have
3 been responsive. Certainly I do not recall your
4 discovery requests as asking for everything that
5 mentioned the U.S. Chamber of Commerce. I mean,
6 that would be just an astronomical number of
7 documents and clips and other things, so I don't
8 recall that -- my recollection is not that your
9 discovery asked for anything that general, but they
10 may well have been produced.

11 Q. You're relying upon this, and by "you", the
12 U.S. Chamber, is relying upon this media in order
13 to support your testimony that the U.S. Chamber of
14 Commerce is well known in business. Right?

15 MR. COLBERT: Could you read the question
16 back, please?

17 (The record was read by the reporter.)

18 MR. COLBERT: I object to the question to
19 the extent that it asks for communication of legal
20 strategy as may be executed on behalf of the U.S.
21 Chamber of Commerce. I object to the question in
22 terms of vague, in terms of "rely" or "support". I

1 object as being beyond the scope of direct because
2 it's not factual. You may respond to the extent
3 you can.

4 A. That is my understanding, yes, that the
5 Chamber is a well known entity nationally.

6 Q. In part based upon media recognition or
7 features in the media. Right?

8 A. The Chamber's name is carried in the media on
9 a daily basis widely.

10 Q. And do you know if for a fact any of these
11 media, clips or transcripts or anything has been
12 produced to us in this case?

13 MR. COLBERT: Objection. Asked and
14 answered.

15 A. I don't recall.

16 Q. And then I think you said that you had
17 appeared on radio programs when you worked for the
18 U.S. Chamber.

19 A. Many times.

20 Q. About how many times would you say you
21 appeared on radio programs during a one-year
22 period?

1 A. How many radio programs specifically?

2 Q. Yes.

3 A. Well, you have to understand I often did
4 radio interviews, for example, with the Associated
5 Press. The Associated Press's radio programs can
6 be picked up by hundreds of stations that subscribe
7 to those services, so it would be impossible to
8 estimate, but it's fair to say that hundreds of
9 radio stations broadcast my voice, for better or
10 worse, in any particular year.

11 Q. I think you have a nice voice.

12 A. Thank you.

13 Q. Did you ever receive any transcripts from any
14 of those radio programs on which you appeared?

15 A. Yes.

16 Q. And do you know if any of those transcripts
17 were provided to us in this litigation?

18 MR. COLBERT: Beyond the scope of direct.
19 Objection.

20 A. I do not know.

21 Q. And on any of those radio stations on which
22 you appeared on behalf of the Chamber of Commerce,

1 were any of them Hispanic based radio stations?

2 A. I don't know.

3 Q. Did you hear any radio program on which you
4 appeared where the program was in Spanish?

5 A. No, but I wouldn't understand it, so I
6 wouldn't be likely to listen to it. I don't speak
7 Spanish.

8 Q. If you hear Spanish do you know that it's
9 Spanish?

10 A. Usually, yes.

11 Q. So you didn't hear any radio stations or
12 radio programs that you appeared on where it was in
13 Spanish?

14 MR. COLBERT: Objection. Asked and
15 answered.

16 A. No.

17 Q. And then you said that you also appeared on
18 -- let me back up. You said the Associated Press,
19 that a lot of programs could be picked up through
20 the AP.

21 A. It was not uncommon for me to be interviewed
22 by services like AP, and there are a number of

1 others where it's sent out and it's up to the local
2 station whether they use that or not.

3 Q. Do you know how many times when you would,
4 just as an example, when you would appear on a
5 program that was associated with the AP that would
6 be picked up by all of their members?

7 A. No.

8 Q. And then you said you appeared on talk shows.

9 A. Yes.

10 Q. And in a one-year period what was the average
11 number of talk shows that you would appear on?

12 A. That would be much smaller. With talk shows,
13 I'm talking about where you're being interviewed
14 often live. I certainly did many on NPR, but I
15 don't consider National Public Radio to be a talk
16 show. Nina Totenberg would often interview me, but
17 I don't consider that a talk show. A true talk
18 show, probably ten a year, maybe twelve.

19 Q. Were any of those talk shows broadcast on a
20 Hispanic network?

21 A. I don't know.

22 Q. Were any of those talk shows conducted in

1 Spanish?

2 A. No, because I don't speak Spanish, so it
3 would be kind of silly for me to be interviewed in
4 Spanish.

5 Q. Were any of those talk shows broadcast in
6 Spanish?

7 A. Not that I know of.

8 Q. And then you also said that you were
9 interviewed on various television networks.

10 A. Yes.

11 Q. Can you give me an example of how many
12 networks you were interviewed on in any given year?

13 A. It would be -- well, the number of networks,
14 and when I'm talking about networks I should
15 clarify that I'm talking about broadcast networks
16 as opposed to all the cable stations that exist,
17 but I would in any typical year be carried on all
18 the major networks, ABC, NBC, Fox, Public
19 Broadcasting. In any year I would be carried by
20 all of them.

21 Q. And then my question was about how many a
22 year would you say that you appeared on.

1 A. You asked how many networks and I answered
2 the networks. I said all the major networks in any
3 given year.

4 Q. Let's back it up, then. How many interviews
5 would you say that you gave to a network, any
6 network, in a given year?

7 A. Any given network could be ten or twelve.

8 Q. Were any of those interviews aired in
9 Spanish?

10 A. Not that I know of.

11 Q. Were any of those networks Hispanic based
12 networks?

13 MR. COLBERT: Objection. Vague. Object
14 to foundation.

15 A. I don't recall.

16 Q. You can't think of any while you sit here
17 today?

18 A. No.

19 Q. And then you said that you were interviewed
20 in every major publication. Was this on behalf of
21 the U.S. Chamber of Commerce?

22 A. In major national publications, yes.

1 Q. National publications?

2 A. And some regional, but yes.

3 Q. How often did that happen in a given one-year
4 period?

5 A. Dozens and dozens of times.

6 Q. 30, 40 times a year?

7 A. I have done many. On a particular Supreme
8 Court decision I remember one three-day period
9 doing 35 interviews with the media, so many, many
10 interviews in any particular year.

11 Q. Were any of those publications Hispanic based
12 publications?

13 A. I don't recall.

14 Q. Did you ever see the articles in which you
15 were interviewed?

16 A. Sometimes.

17 Q. Did you ever see any in Spanish?

18 A. No.

19 Q. You talked about the Spirit of Enterprise
20 award on your direct testimony. You talked about
21 plaques that were given to congressmen.

22 A. Yes.

1 Q. And you also said that a congressman usually
2 sends information about receiving the plaque to
3 their local papers.

4 A. Yes.

5 Q. Can you give me examples of local papers that
6 you've seen where the Congress member who received
7 a plaque was publicized as to receiving that award?

8 A. I'm trying to think if I can point you to a
9 particular publication. I know that I've seen
10 times in our clip service, you know, where
11 Congressman So-and-so from Oshkosh, Wisconsin
12 received the U.S. Chamber Spirit of Enterprise
13 award. I've seen many, many of those.

14 I can't recall a specific one. I know that
15 I've seen that many times in my 30 year career at
16 the Chamber, and certainly every time they were
17 given there would be a number of clips like that.
18 Can I point you to a particular publication? No.

19 Q. Can you identify whether there were any such
20 articles in Spanish papers?

21 A. I actually think I have seen some in Spanish
22 papers where I couldn't read it but I could

1 recognize the Chamber's name and I could recognize
2 the congressman's name. Most of those have been
3 from publications in the southwest, Texas in
4 particular, but I do recall seeing some like that.

5 Q. And can you identify one of those papers for
6 us?

7 A. No, I cannot.

8 Q. And when was the last time you saw one of
9 those papers?

10 A. I can't recall. Probably in the last two
11 years, but I don't recall specifically.

12 Q. Do you recall the first time that you saw a
13 Spanish paper that publicized a Congress member
14 receiving the Spirit of Enterprise award?

15 A. No.

16 Q. You also talked about the U.S. Chamber's
17 anti-counterfeiting activities.

18 A. Yes.

19 Q. And you mentioned that the U.S. Chamber of
20 Commerce has been working with the U.S. Patent and
21 Trademark Office and has an agreement with the PTO.

22 A. I did.

1 Q. And when was that agreement reached?

2 A. It was probably within the last year.

3 Q. Is that a written agreement or oral
4 agreement?

5 A. I believe there's a written agreement.

6 Q. And you think that written agreement was
7 actually entered in the last year or so?

8 A. I do.

9 Q. And what branch of the PTO was that agreement
10 entered with?

11 A. I don't know. I don't know the structure of
12 the PTO particularly well, or I don't know it at
13 all really.

14 Q. Were you involved in the negotiation or
15 execution of that agreement on behalf of the U.S.
16 Chamber of Commerce?

17 A. I believe I may have been involved in
18 reviewing the agreement, but not in the negotiation
19 or execution of the agreement.

20 Q. Who at your office was involved or who at the
21 U.S. Chamber of Commerce was involved in the
22 negotiation of that agreement with the PTO?

1 MR. COLBERT: Objection. Continuing
2 objection to this discovery in an improper context.

3 A. I believe David Hirschman and I believe a
4 fellow named Brad Huther, who actually used to be a
5 senior executive at the PTO and is now a consultant
6 to the Chamber on this anti-counterfeiting
7 initiative. There was also a woman that works with
8 David Hirschman. I can picture her, but I can't
9 recall her name. I'm blanking on her name, but
10 there is also a woman involved in that effort.

11 Q. And you don't know whether it was part of the
12 registration section of the Patent and Trademark
13 Office, the policy or executive branch, or the
14 Trademark Trial and Appeal Board?

15 A. I think I said early on in my testimony that
16 I did not consider myself an intellectual property
17 lawyer, and certainly the complex composition of
18 that agency and its various divisions and who does
19 what I would not profess to know.

20 Q. Is the U.S. Chamber of Commerce providing any
21 financial support to the PTO with respect to this
22 anti-counterfeiting agreement?

1 A. No, not that I recall. I believe it's a
2 cooperation agreement where we're cooperating on
3 this effort.

4 Q. And what exactly is the U.S. Chamber of
5 Commerce doing to cooperate with the PTO? I'm not
6 understanding your testimony.

7 A. Well, there are agreements as to holding and
8 responsibilities in conducting conferences and
9 seminars on the subject and outreach and education
10 on the subject, an agreement that states the
11 responsibilities of the parties in that regard.

12 Q. In your position as general counsel at the
13 U.S. Chamber of Commerce, have you had any
14 discussions with the Patent and Trademark Office
15 about this case?

16 A. No.

17 Q. Are you aware of anyone on your staff while
18 you were employed there that had discussions with
19 anyone at the PTO about this case?

20 A. No. I believe that all discussions with the
21 PTO about this case have occurred through outside
22 counsel, through Mr. Colbert and his associates.

1 Q. You also talked about radio and television
2 programs that the U.S. Chamber of Commerce had.

3 A. Yes.

4 Q. And you said that there were television
5 programs that the U.S. Chamber of Commerce had up
6 until 1997, I believe.

7 A. That is correct.

8 Q. So there are no more television programs as
9 of today?

10 A. No, not that we produce.

11 Q. So the last time that any television programs
12 were produced by the U.S. Chamber of Commerce was
13 sometime in 1997?

14 A. I believe that that's -- it may have been
15 sometime in early '98 that the last one was done,
16 but approximately in that time frame.

17 Q. And when did those television programs start
18 at the U.S. Chamber of Commerce?

19 A. We actually built a small broadcast studio in
20 about 1978, and a syndicated weekly business show
21 known as It's Your Business was produced at the
22 Chamber starting in that year. That program

1 continued until the end of our production of
2 television programs.

3 Q. So somewhere from 1978 to 1997 or 1998?

4 A. It had about a 20 year run.

5 Q. And you said it was syndicated. Who was it
6 syndicated by?

7 A. The Chamber.

8 Q. What station did it appear on? What stations
9 picked it up?

10 A. Well, there were a wide variety of stations
11 across the country. Locally it was carried by
12 WJLA, which was an ABC affiliate. And the time
13 changed. I think it was on Sunday mornings. There
14 was some period, I think locally, where it may have
15 been carried on one of the other local stations,
16 but then it was carried on a number of stations in
17 local communities, and they had a continual effort
18 to try and get more stations to carry it across the
19 country, but I can't recall. I'm sure at some time
20 a saw a list of them, but I can't tell you.

21 Q. You don't know what the total number of
22 stations were that carried that program in any

1 given year?

2 A. No. It's been ten years since we stopped
3 doing it. I would guess, and this is a pure guess,
4 which my attorney will have a fit that I'm guessing
5 at anything, but maybe 50 stations, 50 to 100
6 stations across the United States.

7 Q. How many television programs did the U.S.
8 Chamber of Commerce have? It had It's Your
9 Business, which I understand was one of the first
10 ones, but how many total did it have?

11 A. Well, the only other one that was broadcast
12 was a show called Nation's Business Today, which
13 was a morning news program that was carried on the
14 ESPN network. At some point it changed to the USA
15 network, and I can't remember when that change took
16 place, but there was a point where ESPN gave it up
17 and they got USA to pick it up.

18 Now, they also produced a variety of
19 television programming, and the original concept
20 was that state and local chambers would buy
21 satellite dishes and receive direct linked
22 broadcasts dealing with shows of interest to the

1 business community, and they did produce for
2 several years a number of different programs that
3 would go out on this network. Frankly, they were
4 not particularly successful in getting state and
5 local chambers to buy these dishes, and the big
6 joke was how many people are really watching.

7 You're asking me the number of programs.
8 There were a number of programs done with that
9 concept, and I don't recall specific numbers, but
10 it might have been a dozen different programs.

11 Q. And that's over the course of about just a 20
12 year period?

13 MR. COLBERT: Objection to the
14 characterization of the witness's testimony.

15 A. No, that's incorrect. The period where they
16 actually attempted to get this closed circuit
17 thing, that only lasted a few years. We did TV
18 programming and the It's Your Business show which I
19 specifically referenced, that went on for a 20 year
20 period, but the direct broadcast through satellite
21 dishes was a much shorter period of time, and it
22 was unsuccessful and was dropped after a few years.

1 Q. When did it first start, the closed circuit
2 shows, if that's helpful?

3 A. That's fine. That's helpful. I mentioned
4 that we had a small TV studio. We did a major
5 addition to the Chamber building and built a very
6 large television studio in approximately the
7 1982-'83 period, and it was after the construction
8 of that studio that those closed circuit programs
9 began, and that went on for a few years and then
10 was abandoned.

11 Q. So it was in that 1982 period that the closed
12 circuit --

13 A. It would have been like within the year
14 after, probably closer to '83, maybe '84, and went
15 on for, say, and I don't remember the specific
16 dates or anything, but it went on for a few years,
17 so maybe '83-'84 to maybe '87.

18 Q. The It's Your Business show, what time of day
19 did that air?

20 A. It varied. It was up to the local station
21 that was carrying it when it was broadcast, and it
22 varied all over the ballpark. Locally I know for a

1 long period it was on on Sunday mornings.

2 Q. Do you know what time on Sunday morning?

3 A. I don't recall specifically. This is more
4 than ten years ago.

5 Q. Did It's Your Business ever air in Spanish?

6 A. I don't know.

7 Q. The It's Your Business program, was it ever
8 nominated for any awards?

9 A. I think it was, actually, and I can't tell
10 you what those awards were.

11 Q. Do you know if any of those awards were
12 actually received or whether it was just
13 nominations?

14 A. I think it did receive a few awards, but I
15 don't recall what they were.

16 Q. And do you know when the last time It's Your
17 Business was nominated or that it received an award
18 prior to its termination in '97 or '98?

19 A. No.

20 Q. And do you know what the viewership was for
21 the It's Your Business program?

22 A. I do not.

1 Q. At any given point during that period?

2 A. No.

3 Q. And then what about Nation's Business Today?
4 What day of the week did that air?

5 A. It was broadcast five days a week, Monday
6 through Friday, very early in the morning, six to
7 seven, or it may have been six to seven and
8 repeated at seven to eight, I don't remember the
9 specifics now, but it was a daily show of about an
10 hour.

11 Q. And it started on ESPN before ESPN was all
12 sports and then it switched over to the USA
13 network?

14 A. That's correct.

15 Q. And how long did that run?

16 A. I'm going to say nine or ten years, but I'm
17 guessing. I don't recall specifically.

18 Q. Do you know what the viewership was for the
19 Nation's Business Today program?

20 A. No.

21 Q. Not for any of the years that it was on?

22 A. No.

1 Q. And did Nation's Business Today receive any
2 awards?

3 A. I don't know.

4 Q. Do you know if it was nominated for any
5 awards?

6 A. I don't know.

7 Q. And then you said that the U.S. Chamber still
8 has a syndicated radio program.

9 A. No.

10 Q. It does not?

11 A. No.

12 Q. But it did have at some point radio programs?

13 A. Well, it's not what I would call a syndicated
14 radio program. It's short interviews on particular
15 topics with the president, Tom Donohue. A fellow
16 comes in every month or whatever and tapes them
17 talking about a particular subject. They've got an
18 arrangement with some radio networks to run those,
19 and I think it actually is syndicated, I'd probably
20 use that word, so let that clarify my prior answer.

21 Q. I got lost in there.

22 A. I'm sorry.

1 Q. Is it syndicated or not syndicated?

2 A. I think it's a definitional question. I'll
3 tell you what happens, and whether that's
4 considered syndicated or not, somebody else can use
5 the word to define it. I may have used the term
6 too loosely. What happens is that they've got an
7 agreement with some radio networks where recordings
8 of the U.S. Chamber's president, Tom Donohue, are
9 made on timely topics.

10 For example right now I don't know if they've
11 done one, but it would be typical on the
12 immigration bill, a hot topic, a lot of national
13 interest, where Tom would give a couple of minute
14 spiel on the immigration bill and why it's
15 important to pass the immigration bill. Then it's
16 recorded and given out to these radio stations that
17 would wish to broadcast it.

18 I don't know if that's technically considered
19 syndication or not, I'm not a radio specialist, but
20 I know that that is being done and has been done
21 for many years. That's the only consistent radio
22 programming that the Chamber's involved in at this

1 time that I'm aware of.

2 Q. And how long has the U.S. Chamber of Commerce
3 had these types of short radio programs that you've
4 just described?

5 A. A very long time, because it predates -- Tom
6 Donohue arrived at the Chamber, I believe, in the
7 fall of '97, and the same kinds of things were
8 being done by his predecessor, Richard Leshner.

9 Q. Do you know the number of stations that carry
10 these recordings of Tom Donohue?

11 A. No, I do not.

12 Q. Have you ever known the number of stations
13 that have carried this programming that the U.S.
14 Chamber does?

15 A. I believe I actually reviewed a legal
16 agreement with some service that got these out to
17 radio stations. It may have had that number in
18 there. I probably read it at one time. I
19 certainly have not retained it in my memory.

20 Q. So you don't know what that number is?

21 A. No. I said that I didn't.

22 (Recess.)

1 (Mr. Eliseev leaves the deposition.)

2 Q. We were talking before we broke for lunch
3 about the short radio programs that Tom Donohue was
4 speaking for and that radio stations pick up. Do
5 you know what the viewership is, what the amount of
6 viewership is for those programs?

7 MR. COLBERT: Asked and answered.

8 A. Well, I'll call it listenership since you
9 can't view a radio program, but no, I don't.

10 Q. Has the U.S. Chamber of Commerce while you
11 were employed there ever conducted any surveys to
12 determine how well known the United States Chamber
13 of Commerce name is?

14 MR. COLBERT: Objection. Beyond the
15 scope.

16 A. Yes.

17 Q. Have those been produced to us in this case?

18 MR. COLBERT: Objection. Beyond the
19 scope.

20 A. I don't know.

21 Q. Do you know when -- let's back up. How many
22 of those surveys were done?

1 MR. COLBERT: Continuing objection.

2 A. There have been numerous surveys through the
3 years that I have worked at the Chamber basically
4 to determine their marketing efforts, how
5 successful the marketing efforts were, and I've
6 seen copies of ones that have been done
7 periodically. I can't recall specifically when
8 they were, but they have been done. I might ask
9 you to repeat the question. I think by the end I
10 lost the question.

11 Q. What was the total number of those types of
12 surveys that were done?

13 A. A number were done. I don't know a specific
14 number.

15 Q. Can you think of when the last one was done
16 that you're aware of?

17 A. Certainly within the last 18 months.

18 Q. And was that done in-house by the U.S.
19 Chamber of Commerce or was it done by someone
20 outside of the company?

21 A. An outsider was retained, an outside
22 organization was retained; a professional was

1 retained to do it.

2 Q. And were any of those surveys specifically
3 for testing how well the U.S. Chamber of Commerce
4 name was recognized, or was it geared more towards
5 was the marketing effective?

6 MR. COLBERT: Objection. Compound.
7 Objection. Beyond the scope.

8 A. I think it's been done for both. I mean,
9 it's not just a single question, Have you heard of
10 the Chamber, yes or no, which would determine, you
11 know, how well known it is. I think that they've
12 been less concerned -- they know that the name is
13 known, that many people know who the U.S. Chamber
14 is, but I think they probed beyond that.

15 Q. And in the last five years do you know how
16 many such surveys were done?

17 A. I do not know.

18 Q. And you talked about in your direct
19 examination various policing efforts that the U.S.
20 Chamber has done.

21 A. That's correct.

22 Q. Was that part of your responsibility, to

1 determine which businesses or persons the U.S.
2 Chamber would take action against in connection
3 with its policing activities?

4 A. When you say "action", I assume that you mean
5 legal action.

6 Q. Right. You identified various actions in
7 your direct testimony. You said sometimes you
8 would call the company or business that you thought
9 was infringing, that you would send a cease and
10 desist letter directly, or you would refer it to
11 outside counsel, who would send a cease and desist
12 letter. Right?

13 A. That's correct. I'm going to draw a
14 distinction between actually instituting a lawsuit
15 and those other kinds of more informal actions. It
16 certainly was done under my authority by people
17 that worked for me who made those kinds of
18 determinations. Sometimes I made them, and
19 sometimes I made them in conjunction with my
20 co-counsel at the Chamber. But yes, we made those
21 decisions. A decision to initiate litigation would
22 also have been made in conjunction with people

1 senior to myself.

2 Q. And during the time period that you were at
3 the U.S. Chamber of Commerce, did the Chamber ever
4 file a lawsuit against anyone for trademark
5 infringement with respect to the name, U.S. Chamber
6 of Commerce?

7 A. Yes, I believe so. And understand this is
8 many years ago, and my recollection is somewhat
9 hazy, but there was a group that had another name
10 and began calling themselves the U.S. Chamber of
11 Shipping, and I can't recall the specifics.
12 Counsel got involved, and I've been trying to
13 recall the specifics of whether an actual action
14 was filed or whether we were on the verge of filing
15 that action. I do know that it was settled.

16 This was not a current counsel but a prior
17 counsel. In fact, I referred to him previously; I
18 believe it was Mr. Lawton Rogers. I remember
19 sitting specifically at the settlement agreement
20 where this group agreed to no longer use the name
21 U.S. Chamber of Shipping and to adopt some other
22 name, which I don't recall either.

1 Q. Do you know what year this lawsuit was?

2 A. I don't. It was a considerable length of
3 time ago. It could have been as many as 15 or 20
4 years ago.

5 Q. And you believe that case was settled either
6 before or after a lawsuit was filed?

7 A. Yes, I do.

8 Q. Were any documents relating to that
9 proceeding produced to us in this case?

10 MR. COLBERT: Objection. Foundation.
11 Objection. Beyond the scope.

12 A. I don't know.

13 Q. Was that the only lawsuit that the U.S.
14 Chamber filed during your tenure there that related
15 to the infringement of the name U.S. Chamber of
16 Commerce?

17 A. Other than the instant matter, if we want to
18 call it a lawsuit, and I don't know the proper
19 characterization, you'd know better than I, but
20 yes.

21 Q. And by the instant matter, you're talking
22 about this trademark opposition that you're

1 appearing today to testify for?

2 A. Right.

3 Q. So my next question is: Are you aware of any
4 other proceedings before the Trademark Trial and
5 Appeal Board other than this case in which the U.S.
6 Chamber of Commerce has challenged the registration
7 of any marks containing Chamber of Commerce or U.S.
8 Chamber of Commerce?

9 A. Well, I discussed previously the U.S. Women's
10 Chamber, although we did not, I guess, file
11 anything that I recall specifically with the
12 Trademark Office. There may have been prior filings
13 at the Trademark Office. I do not recall any
14 specific ones at this time.

15 Q. And you talked a little bit about the U.S.
16 Women's Chamber of Commerce during your direct
17 testimony. I think you testified that the
18 trademark is now registered on the supplemental
19 register of the Patent and Trademark Office.

20 A. That's my understanding.

21 Q. Do you know why the mark was registered on
22 the supplemental register?

1 A. No, I do not.

2 Q. Because I think you said previously that the
3 application was abandoned.

4 A. That's correct. I've engaged in some
5 supposition on why that happened, but I don't know
6 why.

7 Q. Has the U.S. Chamber of Commerce taken any
8 steps to petition and cancel that supplemental
9 registration of the U.S. Women's Chamber of
10 Commerce?

11 MR. COLBERT: I'm going to object to the
12 extent it calls for interrogation into privileged
13 attorney-client communication, attorney work
14 product, or other privilege and ask the witness not
15 to answer the question to the extent it implicates
16 those issues.

17 A. And it does. The only discussions of that
18 have been with Mr. Colbert.

19 Q. So you're refusing to answer based on the
20 instruction from your counsel?

21 A. Yes.

22 Q. I think you testified on direct that the name

1 "U.S. Women's Chamber of Commerce" continues to be
2 used to this day.

3 A. That is my understanding.

4 Q. Do you know if a logo is used with that name?

5 MR. COLBERT: Objection. Vague.

6 A. I do not.

7 Q. Do you understand what the word "logo" means?

8 A. I think I do, yes. I'm not sure I can give a
9 trademark lawyer's definition, but I believe I know
10 what it is.

11 Q. Why don't you give your definition?

12 A. My definition is it's a symbol of some sort
13 that represents an organization. Normally you try
14 and get those symbols registered with the Trademark
15 Office, and you can put an R next to it showing
16 it's a registered mark, or a TM.

17 Q. Do you know where the U.S. Women's Chamber of
18 Commerce is located?

19 A. I believe they're here in Washington, D.C.

20 Q. Do you know where in Washington, D.C.?

21 A. I believe they're on Pennsylvania Avenue,
22 N.W. I don't recall the specific street address,

1 but I believe it's on Pennsylvania, N.W. in
2 Washington.

3 Q. Do you know what numbered street it is? I
4 know you guys go by numbers.

5 A. Right, we do, and I vaguely recall -- I don't
6 recall specifically. I did know. I don't recall
7 right now.

8 Q. Do you know what district it is in
9 Washington?

10 A. I'm sorry?

11 MR. COLBERT: Objection. Vague.

12 Q. Is it in Georgetown?

13 A. No.

14 Q. Is it in Foggy Bottom?

15 MR. COLBERT: Objection. Vague.

16 A. I don't know specifically if it's Foggy
17 Bottom.

18 Q. You're aware of the Foggy Bottom area of
19 Washington, D.C.?

20 A. Generally.

21 MR. COLBERT: Objection. Vague.

22 Objection. Lack of foundation.

1 THE WITNESS: I couldn't tell you the
2 exact boundary, but I am generally familiar with
3 the area that's considered Foggy Bottom.

4 Q. And are you familiar with the area that's
5 called Metro Center?

6 A. Well, that's a subway stop.

7 Q. Right, and that geographic area around that
8 subway stop.

9 MR. COLBERT: Objection. I didn't hear a
10 question, but objection to the form.

11 A. Well, I'm almost sure it's on Pennsylvania
12 Avenue, and the Metro Center stop is actually a
13 number of blocks from Pennsylvania Avenue. You
14 could walk to Pennsylvania Avenue certainly from
15 Metro Center.

16 Q. In the 30 years that you worked at the U.S.
17 Chamber it's always been at their headquarters in
18 Washington, D.C.?

19 A. It has.

20 Q. And I think you testified on direct that
21 somebody who was using the name "Federal Chamber of
22 Commerce" was at 2020 Pennsylvania Avenue.

1 A. That is correct.

2 Q. And that would make it Pennsylvania Avenue
3 and 20th Street?

4 A. Between 20thst and 21st on Pennsylvania. And
5 I might add the reason I know that is that it was
6 unusual. They weren't physically there. We walked
7 down there because we thought that's weird, we
8 never heard of that outfit and they're not far from
9 us, and it turns out it was a Mail Boxes, Etc.

10 Q. Do you know if the U.S. Women's Chamber of
11 Commerce is in the same area where that Mail Boxes,
12 Etc. was?

13 A. I said that I don't recall where on
14 Pennsylvania Avenue they were, and that is my
15 answer. I don't know. If I knew I'd be happy to
16 tell you.

17 Q. I'm just trying to give you a reference
18 point. I'm not trying to give you a hard time
19 today. I think you said on direct that there had
20 been instances of confusion with the U.S. Women's
21 Chamber of Commerce.

22 A. Yes, I think there have been some.

1 Q. And how often has that happened?

2 MR. COLBERT: Objection to the form of
3 the question. It's vague.

4 A. I don't know. I know that there have been
5 people who've indicated that they thought there was
6 a connection between the two organizations.

7 Q. When did that first happen?

8 A. Probably about the time that we first started
9 to hear about them, which would have been in the
10 early part of this decade.

11 Q. The early part of 2000?

12 A. In that area. I think I testified that it
13 was around 2000-2001 when we first started to hear
14 of them, and it's been in that period and the
15 ensuing years.

16 Q. Do you know how many instances of confusion
17 the U.S. Chamber of Commerce has experienced with
18 the U.S. Women's Chamber of Commerce?

19 MR. COLBERT: Objection. Lack of
20 foundation. Objection. Vague.

21 A. No.

22 Q. Do you understand my question?

1 A. Yes.

2 Q. I think on direct testimony you gave
3 instances of seven situations where the U.S.
4 Chamber of Commerce has taken steps to police its
5 name, and you identified the U.S. Chamber of
6 Shipping. Can you think of any other policing
7 activities that the U.S. Chamber of Commerce has
8 done to police its name, the U.S. Chamber of
9 Commerce?

10 A. You're confusing me slightly in this way. I
11 assume you're speaking more generally than just
12 lawsuits when you say activities to police. I just
13 want to make sure I understand what you're asking.

14 Q. You talked about calling, cease and desist
15 letters that the U.S. Chamber sends out, and cease
16 and desist letters that your outside counsel sends
17 out. You have the lawsuit, and the only opposition
18 is with the U.S. Hispanic Chamber of Commerce.

19 MR. COLBERT: Objection to the
20 characterization of his testimony.

21 Q. Are there any other activities that the U.S.
22 Chamber of Commerce has taken to police its name,

1 U.S. Chamber of Commerce?

2 A. You mean other than cease and desist letters
3 and --

4 Q. Other than the seven that you identified on
5 direct testimony with your counsel and then the
6 lawsuit that you identified with me.

7 A. "The seven" was throwing me a little because
8 I didn't count them as I spoke about them. There
9 have certainly been many more instances. It was a
10 very common practice, a weekly practice, for myself
11 or Ms. Richmond and other counsel who have worked
12 in our office, to write cease and desist letters to
13 various organizations, to make phone calls, as I
14 talked about with Mr. Hoagland that I handled which
15 went on for quite some time.

16 This was truly a weekly activity of ours.
17 Some were U.S. Chamber of Commerce, some were
18 BizNet, and some were other marks that the Chamber
19 owned. But policing those was a constant activity
20 involving many letters and phone calls that took
21 place.

22 I can't say I remember in my head that six

1 were U.S. Chamber and seven were BizNet or eight or
2 whatever, but it went on constantly that attempts
3 to use our marks was a constant problem, and it
4 was, as I testified, greatly exacerbated with the
5 growth in the internet.

6 Q. And I'm just trying to get a feel for the
7 number that you had with respect to just the U.S.
8 Chamber of Commerce. BizNet is not at issue in
9 this case and nothing else is at issue in this
10 case.

11 MR. COLBERT: Objection. Asked and
12 answered.

13 A. I don't recall the specifics of how many.
14 There were certainly more than the six or seven
15 that I described. Whatever the number was it's in
16 the record, but certainly there were more than
17 that, but I don't recall. You have to understand I
18 had a 25 year career as general counsel, and that's
19 not the kind of thing you just commit to memory.

20 There were certain ones that required more
21 activity and more complaining and more phone calls
22 that stand out, and others you'd just write one

1 letter and they'd go away, and those don't tend to
2 stick in my memory.

3 Q. Can you think of any documents relating to
4 the U.S. Chamber of Commerce's policing activities
5 that were produced to us in this case?

6 MR. COLBERT: Objection, lack of
7 foundation.

8 A. No, I can't, and I have not reviewed the
9 voluminous documents -- I think they're voluminous,
10 anyway -- that were produced to you. I was
11 involved in seeing some of those documents early
12 on. That was quite some time ago. The documents
13 speak for themselves, and I wouldn't profess to
14 recall precisely what's been produced to you at
15 this point.

16 Q. Do you recall collecting or instructing any
17 of your staff to collect policing documents to
18 produce in this case?

19 MR. COLBERT: Objection. Asked and
20 answered.

21 A. Not specifically. We may have discussed it,
22 but I don't have specific recollection.

1 Q. And you said that a lot of the activity came
2 up with the growth of the internet, the policing
3 activity.

4 A. Yes. The misuses grew tremendously because,
5 one, it was easier to discover them and see them on
6 the internet, whereas if they were just printed in
7 some brochure or something or somebody distributed
8 it in Oshkosh I wouldn't necessarily see them. It
9 was easier for myself, for my staff, and for people
10 at the Chamber to see them on the internet. It was
11 a much more accessible thing than other
12 publications.

13 Q. Did the bulk of the policing activity that
14 the U.S. Chamber of Commerce did with respect to
15 the internet, did that relate to the registration
16 of domain names that the U.S. Chamber of Commerce
17 felt were too close to its trademark?

18 A. It probably was a significant part of it, but
19 we'd find out about other organizations through the
20 internet that were using names similar to ours.
21 But yes, the real interest, I think, was in domain
22 names that incorporated "U.S. Chamber" in their

1 names.

2 Q. And were there any policing activities
3 undertaken by the U.S. Chamber directed to names
4 that included the word "Hispanic" other than this
5 present case?

6 A. Not that I'm aware of.

7 Q. Were there any policing activities that the
8 U.S. Chamber took directed to names that included
9 any other designation of minorities?

10 A. No. I can't recall an instance where there
11 was another organization that represented
12 minorities that used "U.S. Chamber" in their name
13 other than we've had the discussion of the U.S.
14 Women's Chamber, and I don't know if women are a
15 minority or not.

16 Q. I guess it depends on who you ask. And then
17 when you talked about your activity, you mentioned
18 a couple that were engaged in fraudulent activity,
19 US Chamber Maps and Federal Chamber of Commerce?

20 A. They used both different names, Regional
21 Chamber and Federal Chamber, at different times.

22 Q. But those were two that were engaged in

1 fraudulent activities?

2 A. Yes.

3 Q. Of the other four that you identified in your
4 direct testimony, do you know if they were also
5 engaged in fraudulent activities?

6 A. If you have a list of those four so that we
7 know we're speaking of the same thing.

8 Q. uschamberofcommerce.com, uschamber.net, U.S.
9 Chamber of eCommerce and US-USSR Chamber of
10 Commerce.

11 A. No. As far as I know, we were not aware of
12 any fraudulent activity or intentional
13 misrepresentations that were being engaged in by
14 those entities.

15 Q. Do you know if uschambers.com is still using
16 that name?

17 A. No.

18 MR. COLBERT: Objection. Asked and
19 answered.

20 THE WITNESS: Yes, I know, and no, they
21 are not.

22 MR. COLBERT: Could you hold on just one

1 second before you ask another question?

2 (Recess.)

3 Q. Do you know it was Skip Hoagland that
4 registered the domain name, uschambers.com?

5 A. Yes.

6 Q. Do you know if Mr. Hoagland has registered
7 any other domain names with "U.S. Chamber" or
8 "Chambers" in it other than uschambers.com?

9 A. No, not that I'm aware of.

10 Q. Has the U.S. Chamber of Commerce taken
11 actions to determine whether Mr. Hoagland is still
12 using the name?

13 MR. COLBERT: Objection to foundation,
14 and objection to the extent that it might reveal
15 attorney-client communications or attorney work
16 product. I would ask the witness not to respond
17 with regard to anything that may be covered by
18 those two privileges.

19 A. I believe that the U.S. Chamber now owns that
20 domain name, or it certainly did at one time since
21 it arose with Mr. Hoagland.

22 Q. I'm actually talking about the name U.S.

1 Chambers, not uschambers.com. I understand that
2 you believe that the U.S. Chamber owns that domain
3 name, but has the U.S. Chamber of Commerce taken
4 any steps to determine whether Mr. Hoagland is
5 still using or was using any name with "U.S.
6 Chambers" in it?

7 MR. COLBERT: Again, same objection with
8 regard to any privileged communication or
9 privileged attorney work product. I would ask the
10 witness not to disclose any such information at the
11 deposition if it invades those privileges.

12 A. I do not know of any recent investigations of
13 whether he's using or not using those names.

14 Q. And the same question with respect to Mr.
15 Hoagland using "U.S. Chamber" singular, not plural.
16 Have there been any steps taken by the U.S. Chamber
17 of Commerce to determine whether he is using a name
18 with "U.S. Chamber" in it?

19 MR. COLBERT: Same objection and same
20 instruction.

21 MS. PIETRINI: Are you instructing him
22 not to answer?

1 MR. COLBERT: Would you like to read
2 back, please, my prior objection and instruction?

3 MS. PIETRINI: He doesn't need to read it
4 back. He's answering a question and you're saying
5 "same instruction", so I'm not really sure if it's
6 an instruction not to answer that question or not
7 to answer anything that possibly has attorney-work
8 product in it.

9 MR. COLBERT: Read it back, please.

10 (The record was read by the reporter.)

11 MR. COLBERT: That's my instruction.

12 MS. PIETRINI: Whatever it means.

13 A. Could you please repeat your question one
14 more time?

15 Q. Has the U.S. Chamber of Commerce taken any
16 actions to determine if Skip Hoagland is using any
17 name with "U.S. Chamber", singular, not plural, in
18 it?

19 A. Yes.

20 Q. And what are those actions?

21 A. We would periodically do Google searches of
22 names and see what we would come up with in terms

1 of uses of those names. These days the search
2 engines can gather that information more than
3 almost any other technique I can think of, and the
4 Chamber's clip service and all usually pulled up
5 all the media clips with the name "U.S. Chamber",
6 so if there was any kind of publicity about him or
7 anyone else using the name "U.S. Chamber" they
8 would show up usually in those things.

9 To the extent those activities would disclose
10 it, the answer is yes.

11 Q. Do you know when the last time any activity
12 was taken, and I'm talking about Mr. Hoagland in
13 particular, when any action was taken to determine
14 whether he was using a name including "U.S.
15 Chamber"?

16 MR. COLBERT: Again I would ask the
17 witness to bear in mind restricting his answer with
18 regard to attorney work product or attorney-client
19 communications.

20 A. And in answering I am doing so. I do not
21 know when it was specifically done as to Mr.
22 Hoagland as opposed to more generically.

1 Q. And then you testified on direct that there's
2 a uschamber.net and that this was owned by the Arab
3 American Chamber of Commerce. Did you take any
4 steps to see whether the Arab American Chamber of
5 Commerce is still using that name?

6 MR. COLBERT: Again, I would ask you to
7 bear in mind attorney-client communications and
8 attorney work product privileges in responding.

9 A. Other than the more generic attempts or tools
10 we have to determine who is using the name "U.S.
11 Chamber", which I think we have been pretty good at
12 disclosing use, I'm not aware of any specifically
13 that targeted the Arab American Chamber of
14 Commerce.

15 Q. Do you know as you sit here today if the Arab
16 American Chamber of Commerce is still using "U.S.
17 Chamber"?

18 A. I do not believe they are, but I do not know
19 specifically.

20 Q. And as you sit here today, do you know if Mr.
21 Hoagland is using "U.S. Chambers" or "U.S. Chamber"
22 singular?

1 A. I do not believe he is, but I don't know
2 specifically.

3 Q. And then this US Chamber Maps that you talked
4 about on direct, do you know if US Chamber Maps is
5 still using that name?

6 A. To my understanding US Chamber Maps does not
7 exist. The principals were thrown in jail for
8 extensive periods of time for fraud. The
9 organization completely ceased to exist. We had
10 huge numbers of complaints from local Chambers of
11 Commerce across the United States about them.
12 Those have ceased, which leads me to believe that
13 the organization no longer exists.

14 Q. Do you know if anyone else other than the
15 original principals is using US Chamber Maps
16 currently?

17 A. I do not have knowledge of what everyone in
18 the United States is doing, and I can't tell that
19 you there's not some human being in the U.S. or
20 elsewhere using that name. No, I can't say that.

21 Q. And are you aware if the Federal Chamber or
22 Regional Chamber, I know they use both names,

1 Chamber of Commerce is still using that name today?

2 A. I do not believe that they are. My knowledge
3 is not all-inclusive, but I am reasonably confident
4 that they are not. Again, these were groups whose
5 activities generated huge numbers of complaints to
6 my office and other offices in the Chamber. Those
7 complaints have ceased. The principals of those
8 organizations were thrown in jail. That somebody
9 else hasn't adopted and used that name somewhere in
10 the United States, I can't tell you that, of
11 course.

12 Q. Has the U.S. Chamber of Commerce taken any
13 action to verify that the name "Federal Chamber of
14 Commerce" is no longer in use?

15 MR. COLBERT: I'm going to object to the
16 extent that the question calls for disclosing
17 attorney-client communication or attorney work
18 product, and that the witness not include any of
19 that information in his response.

20 A. No.

21 Q. Are you aware if the US-USSR Chamber of
22 Commerce is still using that name?

1 A. I don't believe they are. Since the USSR has
2 ceased to exist, I think it's highly unlikely that
3 the US-USSR group would still be using that name.
4 It would be highly unusual since the country it
5 represented is no longer an entity.

6 Q. Where was that entity, the US-USSR Chamber of
7 Commerce, located?

8 MR. COLBERT: Objection. Foundation.

9 A. Well, I don't want my prior answer to be
10 misunderstood. I was referring to their use of
11 USSR in the name, that that country no longer
12 exists, so I can't imagine that anyone would want
13 to call an entity the US-USSR Chamber of Commerce,
14 so it is my belief that it is not being used. That
15 somebody hasn't published something with that name
16 on it, I can't say that for sure.

17 Q. My question was: When the U.S. Chamber of
18 Commerce found out about the US-USSR Chamber of
19 Commerce, where was that entity located?

20 MR. COLBERT: Objection to foundation.

21 A. I do not recall. I did know at one time, but
22 I don't recall.

1 Q. Has the U.S. Chamber of Commerce taken any
2 steps to verify that the name US-USSR Chamber of
3 Commerce is no longer in use?

4 MR. COLBERT: To the extent that it
5 implicates either attorney-client communication or
6 attorney work product, I'd ask the witness to
7 exclude that from his answer.

8 A. And other than that, we have not.

9 Q. In these questions that your counsel has made
10 this instruction, are you withholding any
11 information? It's important for me to know.

12 A. I've had some discussions with my counsel
13 about these names and their prior uses, and I am
14 not disclosing discussions I had with counsel about
15 those names. I'm trying to tell you what I know of
16 my own knowledge. Does that answer your question?

17 Q. Somewhat. I mean, I'm not looking for your
18 communications with Mr. Colbert or anyone else in
19 his office.

20 A. Right.

21 Q. Or in-house counsel at the U.S. Chamber of
22 Commerce.

1 A. Right.

2 Q. I'm trying to find out if the names are still
3 in use, if you have taken any steps to verify the
4 names. That's what I want to know.

5 A. I have not, and I would not, frankly. Like
6 most in-house counsel for a large organization, I
7 had more work than I knew what to do with, and
8 chasing after entities that represented countries
9 that no longer existed would not be -- I would not
10 have considered that a productive use of my time.

11 Q. You understand the question related to all of
12 the ones we were talking about, though. Right?

13 A. Yes.

14 Q. Are you aware of any other entities that use
15 names that include "U.S. Chamber" and "Chamber of
16 Commerce" as you sit here today? You have
17 identified the U.S. Women's Chamber of Commerce.

18 A. It is possible. I can't recall specifics.
19 In the back of my mind it is possible that there
20 are one or two country-specific U.S. and insert
21 some foreign country Chamber of Commerce. It's
22 possible I've heard of a couple of those. I can't

1 say for sure, and I can't give you specifics, but
2 in the back of my mind there's the thought that
3 there may be a couple of those, but my recollection
4 is just not -- I don't recall any specifics.

5 Q. Do you know whether the U.S. Chamber of
6 Commerce has taken any policing activity against
7 any of those other U.S., let's say, Country X
8 Chamber of Commerce names?

9 MR. COLBERT: Objection. Lack of
10 foundation. You may respond.

11 A. It is possible that there were at some point
12 cease and desist letters. But again, I'm guessing
13 and I have no specific recollection of having done
14 so.

15 Q. If you don't know, you don't know. That's
16 fine, too.

17 A. I don't know. I'm trying to give you my best
18 answer.

19 Q. That's fine. You talked about on direct
20 examination the words "Chamber of Commerce". I'm
21 trying to find exactly what you meant. You said
22 that the U.S. Chamber of Commerce has never taken a

1 position that a state or local Chamber of Commerce
2 cannot use the phrase "Chamber of Commerce". That
3 was your direct testimony. Right?

4 A. That is absolutely correct.

5 Q. And why is that?

6 A. We've always considered the term "Chamber of
7 Commerce" to be generic. It's actually a term, to
8 my understanding, that originated in the Middle
9 Ages originally, and the use of that phrase has
10 been around a long time. It's my understanding
11 that trademark lawyers consider it a generic term
12 and that anyone is free to use it.

13 There was a movement, particularly in Florida,
14 to restrict use only to non-profit organizations,
15 because there have been some profit-making
16 organizations that have used the term "Chamber",
17 and some states have felt that's deceptive, and
18 Florida actually proposed legislation on that.

19 Q. Are you aware of any policing activities that
20 the U.S. Chamber has taken against anyone using a
21 name that includes "American" and "Chamber of
22 Commerce"?

1 A. No.

2 Q. What about with the word "National"?

3 A. At times we have. There was a period in the
4 U.S. Chamber's history what it also used the phrase
5 "National Chamber of Commerce", and in fact at the
6 time years ago when we used that more frequently we
7 did take policing action in the same manner that
8 I've described with "U.S. Chamber" and some of our
9 other marks as to "National Chamber of Commerce".

10 Q. As I understand what you just said, the U.S.
11 Chamber of Commerce stopped using "National
12 Chamber" sometime ago.

13 MR. COLBERT: Objection to the
14 characterization of his testimony. You may
15 respond.

16 A. Other than its use in National Chamber
17 Foundation and National Chamber Litigation Center,
18 that's correct. We have not referred to ourselves
19 in recent years as the National Chamber other than
20 by these affiliated organizations that use it in
21 their name.

22 Q. Has the U.S. Chamber of Commerce taken any

1 policing activities against someone using
2 "National" and "Chamber of Commerce" as an
3 infringement of U.S. Chamber of Commerce?

4 MR. COLBERT: Objection to foundation.
5 You may respond.

6 A. I believe I understand your question. You're
7 saying have we gone after someone using "National
8 Chamber" because we thought that that suggested
9 that they were the U.S. Chamber. Is that --

10 Q. Or that it was likely to be confused with the
11 U.S. Chamber name versus the National Chamber name.

12 MR. COLBERT: Objection to the form of
13 the question. Objection to the extent it calls for
14 a legal conclusion. Please respond.

15 A. We did not.

16 Q. Did you understand my question?

17 A. I believe I did, yes. That's why I repeated
18 it back to you, to make sure -- I repeated it back
19 as I understood it, and I think I understand it,
20 and my answer is no, we have not.

21 Q. I appreciate your doing that, because
22 definitely in your answer previously there was a

1 distinction with National Chamber. Other than the
2 policing activities taken against Federal Chamber
3 of Commerce, are you aware of any policing
4 activities taken by the U.S. Chamber of Commerce
5 with respect to entities using names that include
6 "Federal" and "Chamber of Commerce"?

7 A. That's actually the only instance I can
8 recall of someone using "Federal" in conjunction
9 with "Chamber of Commerce". That is the only
10 instance I recall of that.

11 Q. You testified on direct that you were
12 familiar with thousands of other Chambers of
13 Commerce.

14 A. Yes.

15 Q. Of those thousands that you're aware of, do
16 you know how many of them are Hispanic Chambers of
17 Commerce?

18 A. I do not. I know that there are, but I can't
19 tell you the names of thousands. I know that there
20 are, I believe, and this is rough numbers, 2,700
21 state and local Chambers of Commerce that are
22 members of the U.S. Chamber, so I know there's at

1 least that many out there. I know there are a
2 number that are not members.

3 How many of those are Hispanic organizations,
4 I can't tell you. I'm not even sure what a
5 definition of -- are you referring only to -- maybe
6 I should have asked this first, but are you
7 referring only to organizations that have
8 "Hispanic" in their name or whose boards are made
9 up of Hispanics?

10 Q. I actually was going to break it out for you.

11 A. Okay.

12 Q. Let's go with the 2,700 Chambers of Commerce
13 that are members of the U.S. Chamber. Do you know
14 how many of that number are Hispanic based Chambers
15 of Commerce? And what I mean by that is that
16 they're owned or operated primarily by Hispanics.

17 A. Well, put aside owned because every one that
18 I'm familiar with is a non-profit organization
19 which by definition has no stock and can't be owned
20 by anybody.

21 Q. I appreciate your precision.

22 A. As far as operated, certainly in the course

1 of my job I would often get phone calls from local
2 chambers. Most of them are small enough that they
3 do not have in-house counsel, and while we
4 expressly would tell them that we can't provide
5 them legal advice, I would try when they called
6 with a problem, and the problems are always
7 diverse, I would try and point them in the right
8 direction.

9 I certainly have had phone calls from many
10 persons with Hispanic surnames in the course of
11 performing my duties and have attempted to advise
12 such individuals. Now, whether the majority of
13 their board or whether their employment forces were
14 Hispanic, I cannot tell you. I don't know the
15 answer to that.

16 Q. So of the 2,700 Chambers of Commerce that are
17 a member of the United States Chamber of Commerce,
18 do you know how many of those service the Hispanic
19 business community?

20 A. I don't know.

21 Q. Of that 2,700, do you know how many Chambers
22 of Commerce have the word "Hispanic" in their name?

1 A. I do not know.

2 Q. Has the U.S. Chamber of Commerce, in your
3 experience, ever been confused with any other
4 Chamber of Commerce with the name "Hispanic" in it?

5 MR. COLBERT: Objection to the form of
6 the question. Objection to the extent it calls for
7 a legal conclusion.

8 A. Other than discussions that I've had with
9 counsel about this specific case where I know that
10 there have been some instances of confusion, my
11 answer is no.

12 Q. Have you ever encountered any instances where
13 people who have contacted you in any form, by mail,
14 e-mail or telephone, mistook the U.S. Chamber of
15 Commerce with a local or a state Chamber of
16 Commerce?

17 A. I certainly have had instances where people
18 didn't understand the relationship or the
19 distinction between local, state, and the U.S.
20 Chamber.

21 Q. How often did that happen?

22 A. Periodically. I can't give you a specific

1 number. Certainly it happened periodically. I
2 would get phone calls or talk to someone. It's not
3 uncommon to have the perception that the U.S.
4 Chamber was the parent organization, for example,
5 of all state and local chambers, and they didn't
6 understand that they could be a member and not be a
7 member. You get that misperception. Periodically
8 I would talk to people that had that
9 misunderstanding, and I would correct it.

10 Q. You talked about on direct your first
11 knowledge of the Hispanic Chamber of Commerce, and
12 I believe you said that it was in 2001 or so.

13 A. Roughly. I don't have any precise date, of
14 course.

15 Q. How is it that you became aware of the U.S.
16 Hispanic Chamber of Commerce?

17 A. I believe that I originally became aware when
18 our outside counsel at the time, who's not our
19 counsel now, alerted me to a filing that the U.S.
20 Hispanic Chamber had made with the Trademark
21 Office, and, to the best of my recollection, that's
22 the first time that I recalled hearing of them.

1 It's possible I read their name somewhere before
2 that. I have no present recollection of that.

3 Q. And then what about the U.S. Hispanic Chamber
4 of Commerce Foundation? When did you first become
5 aware of the Foundation?

6 A. I believe the first filing actually was on
7 behalf of the Foundation, but that immediately
8 raised the question of the U.S. Hispanic Chamber,
9 if there was a Foundation is there a Chamber, so I
10 think it was all about at the same time.

11 Q. Do you know what the trademark is of the U.S.
12 Hispanic Chamber of Commerce Foundation that is
13 trying to be registered?

14 MR. COLBERT: Objection to the form of
15 the question.

16 A. I certainly have seen it. I could not sit
17 here today -- I've not looked at it in quite some
18 time, and I couldn't sit here and describe it to
19 you, if that's what you're asking me to do.

20 Q. Do you understand that the trademark that the
21 U.S. Chamber of Commerce is trying to oppose
22 registration on is a logo?

1 A. Yes.

2 Q. And you don't know what that logo looks like?

3 A. I have seen that logo. I seem to recall it's
4 round and had the name in it, but at this point
5 I've not looked at it in quite some time. I didn't
6 look at it in preparation for this deposition, and
7 I could not describe it to you today.

8 Q. Have you ever seen -- and we're talking about
9 the foundation logo, which is the subject of the
10 opposition that I understand you're testifying here
11 for today -- have you ever seen that logo used?

12 A. Say that again, please.

13 Q. Have you ever seen the logo of the
14 Foundation, the one that your former employer is
15 trying to challenge the registration to, have you
16 ever seen it used?

17 MR. COLBERT: Objection. Vague.

18 A. I may have seen a document that they used it
19 on that may have been submitted as a sample for
20 their registration. It's very possible I saw
21 something with it on it, but I don't recall.

22 Q. Have you ever seen the logo of the U.S.

1 Hispanic Chamber of Commerce Foundation used in
2 connection with while you were in your regular
3 activities at the Chamber?

4 A. Not related to this proceeding.

5 Q. So it was only in connection with this
6 lawsuit that you saw it? Or not lawsuit but
7 trademark opposition.

8 A. Yes.

9 Q. And then with respect to the U.S. Hispanic
10 Chamber logo, are you familiar with that?

11 A. I'm sure I have seen it in the course of the
12 years that have passed since all this began.

13 Q. But was it only in connection with this
14 proceeding?

15 A. That's all I can currently recall. It is
16 possible I saw it somewhere in my career, you know.
17 Among the thousands of documents I looked at every
18 week I may have seen something with it, but I have
19 no specific recollection.

20 Q. Were you the one that authorized this
21 opposition proceeding to be filed on behalf of the
22 U.S. Chamber?

1 A. I was, in conjunction with other executives
2 at the Chamber.

3 Q. And do you believe that the Foundation's logo
4 that is at issue in this case is confusingly
5 similar to any trademarks of the U.S. Chamber?

6 MR. COLBERT: I'm going to object to the
7 question to the extent it calls for a legal
8 conclusion. I'm going to object to the extent
9 you're asking this fact witness for a legal
10 opinion, which is like an expert opinion, and which
11 I think is improper. I'm going to object to the
12 extent that it calls for any attorney-client
13 communication or attorney work product which may
14 have been communicated to this witness and ask him
15 to exclude any of that from his answer.

16 A. With that in mind, and even before my counsel
17 so advised me, this gets into discussions I had
18 with prior counsel as to whether we should take the
19 action, and therefore I think it's inappropriate
20 for me to answer that.

21 Q. So you're refusing to answer the question?

22 A. Yes, I am.

1 Q. Is the fact that the Foundation's -- and I'm
2 using Foundation in a shorthand way to refer to the
3 U.S. Hispanic Chamber of Commerce Foundation -- is
4 it a fact that the Foundation's logo including the
5 words "U.S. Chamber of Commerce" is the basis for
6 this opposition?

7 MR. COLBERT: I'm going to object to this
8 question to the extent it calls for attorney-client
9 communication or attorney work product that's been
10 communicated to this witness. To the extent that
11 the witness has an understanding beyond that, he
12 may answer. Otherwise, I ask him not to reveal that
13 information.

14 A. That's a tough one to try and answer in
15 conjunction with that advice. I'm trying to parse
16 in my mind whether I had any understanding
17 independent of advice I received from counsel on
18 this matter.

19 MR. COLBERT: Then let me add to my
20 objection that to the extent that the witness
21 formed an opinion within the scope of his duties as
22 chief legal officer for the corporation and made

1 judgments based on that or communicated with
2 anybody, that would be subject to the
3 attorney-client privilege and work product
4 privilege as well.

5 A. Then I can't answer and I will refuse to
6 answer on that basis.

7 Q. Do you have a general recollection of what
8 the Foundation's logo looked like or none
9 whatsoever?

10 A. I do have a general recollection. I recall a
11 round logo. I seem to recall, and I'm not going to
12 do a dying declaration on this, but I seem to
13 remember that it says U.S. Hispanic Chamber of
14 Commerce Foundation in a circular manner around the
15 logo. That is my recollection, but it's been a
16 while since I looked at it. I know I have seen it
17 in the past, but that's my only current
18 recollection of it.

19 Q. Independent of your discussions with prior or
20 current counsel, do you believe that the logo of
21 the Foundation is similar to the name "U.S. Chamber
22 of Commerce"?

1 MR. COLBERT: I object to the question to
2 the extent it calls for an expert opinion. This
3 witness is not here to testify to that. I object
4 to the extent it calls for a legal conclusion,
5 which is beyond the scope of this witness's
6 testimony here. It's not relevant and it's
7 inadmissible. To the extent the witness has formed
8 such a belief within the scope of his duties as
9 chief legal officer of the corporation, I believe
10 that's attorney work product and would instruct him
11 not to answer.

12 A. I cannot draw a distinction between my
13 opinion as a lawyer that I drew. I wasn't a layman
14 and I certainly was involved in giving advice to my
15 client, the U.S. Chamber of Commerce, on this
16 matter and on the actions they should take in this
17 matter, and therefore I think it inappropriate for
18 me to answer.

19 Q. So you're not going to answer. Right?

20 MR. COLBERT: Asked and answered.

21 A. I think that's what I said.

22 Q. When you were at the U.S. Chamber of Commerce

1 were you the one responsible or the one who made
2 the decision to take action against Skip Hoagland's
3 domain name, uschambers.com?

4 A. In conjunction with outside counsel, yes.

5 Q. Do you believe that that name,
6 uschambers.com, is similar to U.S. Chamber?

7 MR. COLBERT: I object to the extent
8 you're calling for a legal conclusion, and to the
9 extent that his conclusion was derived as chief
10 legal officer of the corporation, I would ask the
11 client not to answer.

12 MS. PIETRINI: Do not take my silence as
13 conceding to that at all, but I'd just like to get
14 through the record.

15 A. Well, I believe I previously testified to the
16 actions I took based on learning of that name, so I
17 think my recollections speak for themselves in
18 terms of how I viewed it.

19 Q. So the fact that the U.S. Chamber took action
20 against uschambers.com indicates your belief that
21 that name was similar to U.S. Chamber of Commerce?

22 MR. COLBERT: Objection. Asked and

1 answered. Objection to the extent that it asks for
2 additional information with respect to the
3 witness's legal opinions and legal conclusions
4 which as chief legal officer he relied upon and
5 advised his client. You may respond otherwise.

6 A. Repeat your last question.

7 MS. PIETRINI: Can you read it back for
8 me, please?

9 (The record was read by the reporter.)

10 THE WITNESS: I don't think I can answer
11 beyond the answer I already gave. I therefore am
12 refusing to answer beyond the answer I already
13 provided you.

14 Q. You testified on direct that the U.S. Chamber
15 of Commerce had a well established practice where
16 if anyone ever saw anyone using marks similar to
17 yours, then they would that the general counsel's
18 office, which is your office, would take action.
19 I'm trying to figure out what would constitute a
20 mark similar to the U.S. Chamber of Commerce.

21 A. Well, certainly the same name, "U.S. Chamber
22 of Commerce", and "U.S. Chamber", or "U.S.

1 Chambers" were certainly similar, and those are the
2 kinds of names that we consistently -- that our
3 history shows we consistently took action to
4 police.

5 Q. And you don't think the U.S. Hispanic Chamber
6 of Commerce is the same as U.S. Chamber of
7 Commerce, do you?

8 MR. COLBERT: Are you asking him for his
9 personal opinion? Are you asking him as counsel
10 for the U.S. Chamber of Commerce?

11 MS. PIETRINI: However we wants to define
12 it. I'm following up on his answer, when he said
13 certainly when we thought the names were the same
14 we'd go after them.

15 A. Or similar.

16 Q. Or similar.

17 A. I think it is certainly similar. Obviously
18 the name "Hispanic" is there, which is not in U.S.
19 Chamber of Commerce, so it's not identical. That's
20 obvious from the name. But it was my view that
21 that could be confused.

22 Q. That the U.S. Hispanic Chamber of Commerce

1 could be confused with U.S. Chamber of Commerce?

2 A. Right.

3 Q. And on what do you base that opinion?

4 MR. COLBERT: To the extent you're asking
5 the witness for anything beyond his personal
6 opinion, which would implicate any information he
7 received as chief legal officer of the
8 organization, or opinions he formed as chief legal
9 officer which he used in performing his duties for
10 the corporation, I'd ask him to exclude the answer.
11 Otherwise you can respond.

12 A. I'll attempt to answer your question
13 consistent with my counsel's advice. It has been
14 my experience that the general public, when they
15 see changes in descriptors that go with longer
16 names, that they make the assumption that these are
17 part of the same entity. It's true in terms of our
18 affiliates, such as the National Chamber
19 Foundation, that everyone else understands that
20 that's related to the U.S. Chamber because of the
21 similarities of the names. They're not identical
22 names, but people understand they are because of

1 the similarities in the names.

2 And the same is certainly true when you add
3 "Women's" or "Hispanic" to U.S. Chamber of Commerce
4 that people get confused as to whether there's a
5 relationship or not or whether they are the same
6 entity.

7 Q. Is it your belief that when you talked about
8 the other names that you're aware of where it was
9 U.S. or a country or region and then Chamber of
10 Commerce that any of those names would also likely
11 be confused with U.S. Chamber of Commerce?

12 MR. COLBERT: Could you read the question
13 back, please?

14 (The record was read by the reporter.)

15 MR. COLBERT: Objection. Vague.

16 A. Well, in fact we did engage in policing
17 activities against the US-USSR Chamber of Commerce,
18 which abandoned or told us they were abandoning
19 attempts to use that name, so I think the answer is
20 clearly yes.

21 Q. Does the U.S. Chamber of Commerce use a logo?

22 A. Yes.

1 Q. Has that logo ever appeared with stars in it?

2 A. Actually, we changed our logo in probably the
3 mid to late '80s, and the logo the U.S. Chamber
4 used before that, the newer logo has a stylized
5 eagle in it. The logo we used before that I seem
6 to recall did have a bunch of stars around it, yes.

7 Q. Is that old logo that you're thinking of
8 still in use by the U.S. Chamber of Commerce?

9 A. Not currently. It's on old documents, but
10 it's not currently in use. We adopted a more
11 modern logo.

12 Q. The current logo that is used by the U.S.
13 Chamber of Commerce, is it ever used with the
14 letter H in it?

15 A. Is it used with the letter H in it? Do you
16 mean like one of the words has an H in it?

17 Q. Let's back it up a little bit. Does the
18 current logo, the U.S. Chamber of Commerce logo,
19 ever appear with just the letter H in it?

20 A. No.

21 Q. Is there any other solo letter singled out in
22 the U.S. Chamber of Commerce logo?

1 A. Not that I can recall.

2 Q. Is the current U.S. Chamber of Commerce logo
3 ever used with a pictorial representation of a
4 person?

5 A. No.

6 Q. What about a pictorial representation of
7 people, several people?

8 A. Not that I can recall.

9 Q. The old logo that you have in mind, the one
10 that was, I guess, discontinued sometime in the
11 late '80s, was that ever used with the letter H
12 singled out?

13 A. No, not that I know of.

14 Q. Was what old logo of the U.S. Chamber of
15 Commerce ever used with a pictorial representation
16 of a person?

17 A. Not that I know of.

18 Q. Was the old logo of the U.S. Chamber of
19 Commerce ever used with a pictorial representation
20 of people?

21 A. Not that I know of. And let me make it clear
22 that I'm basing my answer on my history with the

1 Chamber. That logo certainly predated my arrival
2 at the Chamber. My testimony has not attempted to
3 include what it may have done before I arrived
4 there, but I do not recall ever seeing it in the
5 manner that I've answered here.

6 Q. I understand. You started in 1977 at the
7 NCLC, and then you went over to split your time
8 between the U.S. Chamber in 1983.

9 A. Right.

10 Q. And at the time in 1983 do you recall ever
11 seeing the old logo of the U.S. Chamber used with a
12 pictorial representation of people?

13 A. No.

14 Q. And in 1983 do you ever recall seeing the old
15 logo used with an H singled out?

16 A. No.

17 Q. Have you ever been to an event that was put
18 on by the U.S. Hispanic Chamber of Commerce?

19 A. No.

20 Q. Have you ever been to a conference that was
21 put on by the U.S. Hispanic Chamber of Commerce?

22 A. No.

1 Q. Have you ever been to an event that was put
2 on by the U.S. Hispanic Chamber of Commerce
3 Foundation?

4 A. No.

5 Q. What about a conference put on by the
6 Foundation?

7 A. No.

8 MS. PIETRINI: If we take a five minute
9 break I think I might be done.

10 (Recess.)

11 Q. You talked about in your testimony today that
12 you were aware of instances of confusion between
13 U.S. Chamber of Commerce and U.S. Hispanic Chamber
14 of Commerce. Correct?

15 A. Yes.

16 Q. Is your knowledge of those instances of
17 confusion based only on your communications with
18 counsel?

19 A. Communications with counsel and -- yes.

20 Q. While you were employed at the U.S. Chamber
21 of Commerce, did anyone personally tell you that
22 they thought that the U.S. Hispanic Chamber of

1 Commerce was affiliated in some way with the U.S.
2 Chamber of Commerce?

3 A. Told me personally, no.

4 Q. I assume you had an e-mail --

5 A. And when I say that, I mean other than
6 counsel.

7 Q. I understand that. I assume you had an
8 e-mail account at least at some point during your
9 30 years at --

10 A. And I still do, unfortunately.

11 Q. -- at the U.S. Chamber. And during the time
12 period you had an e-mail account, and I understand
13 it wasn't the entire 30 years --

14 A. Thank God.

15 Q. During the time you had that e-mail account,
16 did you ever receive any e-mail that was intended
17 for the U.S. Hispanic Chamber of Commerce?

18 A. No.

19 MR. COLBERT: I object to the question as
20 vague.

21 Q. Did you understand my question?

22 A. I think so, and the answer is no.

1 Q. During that time period that you had e-mail
2 at the U.S. Chamber of Commerce, did you ever
3 receive any e-mails that were intended for the U.S.
4 Hispanic Chamber of Commerce Foundation?

5 MR. COLBERT: Same objection on
6 vagueness, and objection to lack of foundation.

7 A. No.

8 Q. While you were employed at the U.S. Chamber
9 of Commerce I assume that you received mail
10 addressed to you.

11 A. Yes.

12 Q. Did you ever have any mail that was addressed
13 to you that misidentified your employer as the U.S.
14 Hispanic Chamber of Commerce?

15 A. No.

16 Q. Did you ever have any mail that was addressed
17 to you where it misidentified your employer as the
18 U.S. Hispanic Chamber of Commerce Foundation?

19 A. No.

20 Q. And I assume you had phone calls while you
21 worked at the U.S. Chamber of Commerce.

22 A. Many.

1 Q. And in any of those phone calls do you recall
2 any time when someone was looking for the U.S.
3 Hispanic Chamber of Commerce and got you instead at
4 the U.S. Chamber of Commerce?

5 MR. COLBERT: Objection to lack of
6 foundation and vagueness.

7 A. Not that I recall.

8 Q. And did you receive any calls that you
9 answered or that your secretary answered that were
10 intended for the U.S. Hispanic Chamber of Commerce
11 Foundation that came to the U.S. Chamber instead?

12 MR. COLBERT: Objection. Lack of
13 foundation. Objection. Vague.

14 A. As to myself, no, and as to my receptionist
15 or secretary, none that I know of.

16 Q. The fundraising that you talked about for the
17 U.S. Chamber of Commerce early on, during those
18 fundraising activities when you went to go meet
19 with people, did anyone ever ask you if the U.S.
20 Hispanic Chamber of Commerce was affiliated with
21 the U.S. Chamber of Commerce?

22 A. No.

1 Q. And this question is addressing fundraising
2 for the U.S. Chamber of Commerce, now because I
3 know we've made a distinction here. Did anyone
4 ever ask you if the U.S. Hispanic Chamber of
5 Commerce Foundation was affiliated with the U.S.
6 Chamber of Commerce?

7 A. No.

8 Q. Did anyone ask you during your fundraising
9 activities at the U.S. Chamber of Commerce if the
10 U.S. Hispanic Chamber of Commerce was related to or
11 connected with the U.S. Chamber of Commerce?

12 A. Not that I recall.

13 Q. Did anyone ever ask you during those
14 fundraising activities for the U.S. Chamber of
15 Commerce, did anyone ever ask you if the U.S.
16 Hispanic Chamber of Commerce Foundation was related
17 to or connected with the U.S. Chamber of Commerce?

18 A. No.

19 Q. And in your fundraising activities for the
20 NCLC, did anyone ever ask you if the U.S. Hispanic
21 Chamber of Commerce was affiliated with the U.S.
22 Chamber of Commerce?

1 A. No.

2 Q. Did anyone ever ask you during those
3 fundraising activities at NCLC if the U.S. Hispanic
4 Chamber of Commerce Foundation was affiliated with
5 the U.S. Chamber of Commerce?

6 A. No.

7 Q. And during those fundraising activities for
8 the NCLC did anyone ever ask you if the U.S.
9 Hispanic Chamber of Commerce was related to or
10 connected with the U.S. Chamber of Commerce?

11 A. No.

12 Q. And finally, during your fundraising
13 activities at NCLC, did anyone ever ask you if the
14 U.S. Hispanic Chamber of Commerce Foundation was
15 related to or connected with the U.S. Chamber of
16 Commerce?

17 A. No.

18 MS. PIETRINI: I don't have any further
19 questions.

20 MR. COLBERT: I just have a couple, I
21 think.

22 EXAMINATION BY COUNSEL FOR OPPOSER

1 BY MR. COLBERT:

2 Q. You were asked a series of questions about
3 the U.S. Hispanic Chamber of Commerce logo. Do you
4 recall those?

5 A. Yes.

6 Q. Do you remember being asked a series of
7 questions about the U.S. Chamber of Commerce logo
8 and whether it included the letter H?

9 A. Yes.

10 MS. PIETRINI: Objection. Misstates the
11 testimony.

12 Q. Do any of the affiliates which you've
13 identified, affiliates of the U.S. Chamber of
14 Commerce, use initialisms in their logos to
15 identify that particular affiliate?

16 A. Yes.

17 Q. Could you identify some of them?

18 A. NCLC, which we've been talking about. NCF,
19 which is the National Chamber Foundation. CIPE,
20 which stands for the Center for International
21 Private Enterprise. Those are the only ones that I
22 can recall off the top of my head that use

1 initialisms in their logo.

2 Q. Does the Institute for a Competitive
3 Workforce use initials in its logo?

4 MS. PIETRINI: Objection. Leading.

5 A. They refer to themselves by their initials.
6 I can't recall their logo.

7 Q. You mentioned a moment ago that you still
8 have an e-mail account. Do you mean an e-mail
9 account at the U.S. Chamber of Commerce?

10 A. I do.

11 Q. Do you have any relationship to or
12 affiliation with the U.S. Chamber of Commerce since
13 your retirement?

14 A. I do. I'm a consultant for the Chamber. I'm
15 not employed by the Chamber. That's why I answered
16 that I'm not employed. I'm under a consulting
17 contract with the Chamber.

18 Q. You were asked a series of questions about
19 whether you received e-mails intended for the U.S.
20 Hispanic Chamber of Commerce. Do you remember
21 that?

22 A. Yes.

1 Q. If the words "U.S. Hispanic Chamber of
2 Commerce" are not contained within the e-mail, on
3 what basis would you know whether or not they were
4 intended for your organization or the U.S. Hispanic
5 Chamber of Commerce?

6 MS. PIETRINI: Objection. Leading.

7 A. Well, asking me to resolve some matter,
8 asking me to resolve a question about the Hispanic
9 Chamber for this litigation or to an individual
10 that's with them or assumed I was the general
11 counsel for the organization, those would be the
12 kinds of things that would lead me to believe that
13 it was intended for them rather than me.

14 Q. Absent such an indication, would you know
15 whether or not the sender intended it to go to
16 somebody else?

17 MS. PIETRINI: Objection. Leading.

18 A. No.

19 (Continued on the following page.)
20
21
22

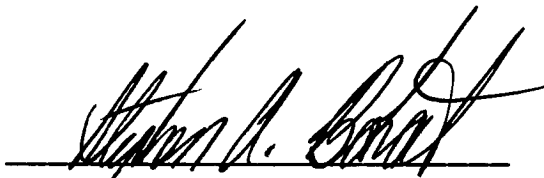
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MR. COLBERT: Nothing further.

MS. PIETRINI: No further questions.

(Whereupon, at 2:15 p.m. the taking of the
deposition was concluded.)

(Signature not waived.)



STEPHEN A. BOKAT

Subscribed and sworn to before me

this 27th day of September, 2007.



(Notary Public)

ALICIA R. HARRIS
Notary Public, District of Columbia
~~My Commission Expires May 31, 2011~~

My Commission Expires:

1 UNITED STATES OF AMERICA)

2 ss:

3 DISTRICT OF COLUMBIA)

4
5 I, KEITH A. WILKERSON, a Notary Public in
6 and for the District of Columbia, do hereby certify
7 that the within transcript is a true and accurate
8 record of the testimony of STEPHEN A. BOKAT under
9 oath and other proceedings in The Chamber of Commerce
10 of the United States of America v. United States
11 Hispanic Chamber of Commerce Foundation, Opposition
12 Number 91/156,321 and Serial Number 78/081,731. The
13 deposition was held at the offices of Kenyon & Kenyon
14 LLP, 1500 K St. N.W., Washington D.C., on Thursday,
15 June 28, 2007, from 10:09 a.m. to 2:15 p.m. and in
16 the presence of both parties.

17
18 I further certify that I am not a
19 relative, employee, attorney or counsel of any of
20 the parties to this action and that I am in no way
21 interested in the outcome of this matter.

22
23 IN WITNESS WHEREOF, I have hereunto set
24 my hand this 9th day of July, 2007.

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KEITH A. WILKERSON

My Commission Expires:

November 16, 2009

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ORIGINAL

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1 IN THE UNITED STATES PATENT AND TRADEMARK OFFICE
2 BEFORE THE TRADEMARK TRIAL AND APPEAL BOARD

3 - - - - - x

4 THE CHAMBER OF COMMERCE OF :

5 THE UNITED STATES OF AMERICA, :

6 Opposer, : Opposition No

7 vs. : 91/156,321

8 UNITED STATES HISPANIC CHAMBER : Serial No.

9 OF COMMERCE FOUNDATION, : 78/081,731

10 Applicant. :

11 - - - - - x

12

13 Deposition of PATRICIA A. COLE, a witness

14 herein, called for examination by counsel for

15 Opposer in the above-entitled matter, pursuant to

16 notice, the witness being duly sworn by Robert M.

17 Jakupciak, a Notary Public in and for the District

18 of Columbia, taken at the offices of Kenyon &

19 Kenyon, 1500 K Street, N.W., Washington, D.C.,

20 20005, at 9:00 a.m., on June 20, 2007, and the

21 proceedings being taken down by Stenotype by Robert

22 M. Jakupciak, RPR.

1 APPEARANCES:

2 On behalf of the Opposer:

3 EDWARD T. COLBERT, ESQUIRE

4 ERIK C. KANE, ESQUIRE

5 Kenyon & Kenyon, LLP

6 1500 K Street, N.W.

7 Washington, D.C. 20005

8 (202) 220-4216

9

10 On behalf of the Applicant:

11 ANDREW ELISEEV, ESQUIRE

12 JILL M. PIETRINI, ESQUIRE

13 Manatt, Phelps & Phillips, LLP

14 11355 W. Olympic Boulevard

15 Los Angeles, California 90064

16 (310) 312-4384

17

18

19 Also Present

20 Shanise Gholston

21 Michael Jackson

22

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Summary for Research done by

The Winston Group for the U.S.

Chamber of Commerce

(USCC 50091-50097)

1 Whereupon,

2 PATRICIA A. COLE,
3 called for examination by counsel for Opposer and
4 having been duly sworn by the Notary Public, was
5 examined and testified as follows:

6 EXAMINATION BY COUNSEL FOR OPPOSER

7 BY MR. COLBERT:

8 Q. Good morning, Mrs. Cole.

9 A. Good morning.

10 Q. Could you please identify for the record
11 where you are currently employed?

12 A. I'm employed in the Membership and Sales
13 Operations Department of the U.S. Chamber of
14 Commerce.

15 Q. And what is your title there?

16 A. Vice president.

17 Q. As vice president of sales and membership
18 operations?

19 A. Yes.

20 Q. And how long have you held that job?

21 A. Over two years.

22 Q. Will you please describe briefly your

1 duties in that position?

2 A. I provide support to many of the sales
3 channels within the Chamber and I also provide
4 membership support for small business.

5 Q. Let's talk about the membership sales
6 support for a minute. What do you do to support
7 those sales efforts?

8 A. We work with others in the Chamber to
9 produce documents or produce marketing collateral
10 that they'll use in their sales presentations.

11 Q. Are there separate sales divisions or
12 membership divisions within the Chamber?

13 A. Yes, there are. We have national
14 accounts we define as businesses with revenues over
15 a hundred million dollars. I do not provide direct
16 support to that particular sales channel.

17 There is the small business sales
18 channel, which are businesses from zero to ten
19 million dollars in revenue. And there is the
20 mid-market sales channel, the newest sales channel,
21 that focuses on businesses from twenty to one
22 hundred million dollars in revenue.

1 And we do provide support to the
2 federation side of things, OAR and OCCR. OAR being
3 associations and OCCR being Chambers of Commerces.

4 Q. Is there a tele-sales division?

5 A. There's a tele-sales division in the
6 small business arena. Under the small business
7 sales support there are many ways we support that
8 division. It's not only through new acquisitions,
9 it's through retention as well. Part of retention
10 is tele-sales, which is a division down in Dallas,
11 which is overseen by another vice president.

12 Q. Could you, please, describe a typical
13 procedure for marketing to the mid-cap or mid-market
14 sales businesses.

15 A. Sure. We buy a prospect list to those
16 particular businesses. The executive director or
17 ED, as I would refer to it, are the sales part of
18 this particular segment. And what they would do is
19 call a prospect, talk about the product, set up an
20 appointment with the prospect, usually being a CEO
21 or COO level, and when they have secured that
22 meeting they'll ask for what is called a research

1 brief. Those research briefs, there's two different
2 ones. There's an analysis brief and a research
3 brief.

4 An analysis brief is background
5 information for the executive director to understand
6 the company that they're going for to ask for
7 membership. The research brief is a marketing piece
8 that is left with the prospect and it talks about
9 how our issues align with their issues, what we're
10 working on and how they can become engaged, an
11 active member in the U.S. Chamber of Commerce.

12 Q. And can you describe the typical
13 procedure for marketing to the small business arena?

14 A. Sure. The small business arena, we have
15 what we refer to as field directors. Field
16 directors go door-to-door, store-to-store, it's a
17 one-call close. They do not have prospect lists.
18 They'll target a particular ZIP code or a particular
19 block in a city, let's say, and just go door-to-door
20 knocking on the doors talking about our value
21 proposition and hopefully getting a small business
22 member in, you know, as they do this.

1 Q. So if I understand it, if they were to
2 target a particular ZIP Code or a block, they would
3 address all the businesses in that area?

4 A. Pretty much. Yes.

5 MR. ELISEEV: Objection; leading.
6 Objection; counsel is testifying. Strike the
7 preamble.

8 Q. Do you -- does the Chamber have a program
9 to exclude businesses from sales calls in small
10 business?

11 A. No. Well, I mean, let me clarify. No.
12 The only ones we exclude are those that are
13 federation members that have come in, but no, they
14 do not exclude anybody.

15 Q. You mean, by federation members you mean
16 businesses that are already members of the U.S.
17 Chamber of Commerce?

18 A. Yes.

19 Q. All right. I have a collection of
20 materials here that I understand relate to some of
21 those sales programs.

22 First, can you tell me, looking at the

1 stack of documents, do you know where these
2 materials came from?

3 MR. ELISEEV: Objection. Lack of
4 authentication.

5 MS. PIETRINI: Could we have copies,
6 please, if you are going to show the witness?

7 A. These?

8 Q. Yes.

9 A. Yes. These are collected by myself or my
10 staff. And you want me to go through them one at a
11 time?

12 Q. I will. I just wanted to know the source
13 of these. And when you personally collected these
14 or your staff collected them, was that at your
15 direction?

16 A. Correct.

17 Q. From where were the documents gathered?

18 A. Various places within the Chamber.

19 Q. Okay. Let me start with a document which
20 bears the production numbers of USCC54420 through
21 51.

22 MR. COLBERT: Do you have a set of these?

1 You gave both of our sets?

2 MR. KANE: No. You have the other one
3 right there.

4 Q. Okay. Numbers 54420 through 51, and ask
5 if you can identify this document, please?

6 A. Sure. This document is --

7 Q. This is the one right here?

8 A. Thank you. This document starting with
9 54220 is our member resource guide that we give to
10 our mid-caps or mid-market members once they join
11 the Chamber of Commerce.

12 Q. And what's contained in that document?

13 A. Information on how to get engaged with
14 the Chamber of Commerce and involved with the
15 Chamber of Commerce activities. It talks about
16 government affairs, it talks about our departments,
17 it explains our departments and our resources
18 available to them.

19 Q. I note when I flip through it there
20 are -- and I have the original here -- there are it
21 looks like tabs on some of the pages like on 54422
22 and again on 54430, et cetera.

1 If you could tell me what those tabs
2 represent?

3 A. They represent topics -- excuse me --
4 they represent topics of interest. I mean, they
5 represent -- you want me to specifically talk about
6 these or?

7 Q. I just want to know what the tabs
8 represent. You said they're topics. What do you
9 mean?

10 A. We divided the resource guide into what
11 we thought were, you know, reasonable ways of
12 explaining the member benefits to the companies.
13 This first tab, the Committee Councils and Task
14 Forces, tells, explains all the committees and
15 councils available to them as members.

16 Q. Let's take as an example, if you turn to
17 page 23, as an example, behind that first tab,
18 54423, there seems to be, there's some topic
19 headings.

20 A. Uh-huh.

21 Q. Accrediting Board, Africa Subcommittee,
22 et cetera. And there's one, Council on Small

1 Business, is the last one.

2 A. Correct.

3 Q. You describe -- what's the Council on
4 Small Business?

5 A. This is a council made up of small
6 business members whose, who will get together a
7 couple times a year and discuss actions and
8 strategies for small business, the small business
9 community.

10 Q. If I understand correctly, this is
11 materials provided to a mid-cap member after they
12 become a member?

13 A. Correct.

14 MR. COLBERT: I would like to have this
15 marked as Opposers Exhibit, Cole 8.

16 (Cole Exhibit No. 1
17 was marked for
18 identification.)

19 MS. PIETRINI: Are you -- yesterday you
20 said you were going to start over on the numbers.
21 It doesn't matter to me, just as long as we know.

22 MR. ELISEEV: Yes, he said he was going

1 to start over with number 1. That's fine.

2 MR. COLBERT: We'll just call this Cole
3 Exhibit 1. It makes it easier. Okay. I was just
4 trying to make it easier.

5 MS. PIETRINI: Oh no, I agree. I'm with
6 you. We had a different situation yesterday.

7 BY MR. COLBERT:

8 Q. I would next like to show you a document
9 that bears the production numbers UCC54452 through
10 62 and ask if you can identify that document?

11 A. This is a marketing piece for the
12 mid-market prospect category. The executive
13 director will often leave it with a prospect or mail
14 it to a prospect.

15 Q. Is this for any particular one of the
16 sales channels?

17 A. Mid-market. I interchange mid-cap and
18 market a lot.

19 Q. Okay. I'm looking at the pages 54459 and
20 60, if you could look at that specifically?

21 A. Yeah. That's not part of the marketing
22 piece. It's not in this particular package. What

1 you're looking at -- oh, I'm sorry. It is. This is
2 an application. This application, often it gets
3 inserted into -- not inserted. This application is
4 used by the mid-market executive directors when they
5 make a sale. This is what initiates -- yeah.

6 Q. I'll show you the original, if you want
7 to see the original?

8 A. Yeah. This is probably -- this was
9 tucked in there. This is the application to become
10 a member in the mid-market arena. That's not often
11 left with the prospect. That's handled by the
12 executive director.

13 MR. COLBERT: Could you read that answer
14 back?

15 - - -

16 (Whereupon the following portion of the
17 testimony was repeated by the Court Reporter:

18 ANSWER: Yeah. This is probably -- this
19 was tucked in there. This is the application to
20 become a member in the mid-market arena. That's not
21 often left with the prospect. That's handled by the
22 executive director.)

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Q. When you say it's not left, you're talking about the application, the separate application form itself?

A. Correct.

Q. But what's otherwise identified as 54552 is left with member?

A. Correct.

MR. COLBERT: I would like to have Document 54452 through 62 identified as Cole Exhibit 2.

(Cole Exhibit No. 2
was marked for
identification.)

BY MR. COLBERT:

Q. I would like to show you what's been, what bears the production numbers USCC54463 through 87 and ask if you can identify that document?

A. Yes. This is the research brief that is left with mid-market prospects.

Q. I believe you previously testified something about a research brief used in mid-market

1 marketing?

2 A. That's what this is. There's -- well
3 there's an analysis brief and a research brief.

4 Q. Okay. Let me show you a document which
5 has been marked with USCC54488 through 96 and ask if
6 you can identify that?

7 A. This is the analysis brief. This is for
8 the executive directors to learn more information
9 about the prospect they're about to sell membership
10 to. This is not left with the prospect.

11 MR. COLBERT: I would like to have marked
12 as Cole Exhibit 3, a document starting with
13 USCC54463, and as Cole Exhibit 4 the document
14 beginning with 54488.

15 (Cole Exhibit Nos. 3
16 and 4 were marked
17 for identification.)

18 BY MR. COLBERT:

19 Q. Handing you back what's been marked as
20 Cole Exhibit 3 and Cole Exhibit 4. I would like you
21 to look at Cole Exhibit 3 first.

22 Is Cole Exhibit 3 typical of the

1 customized reports that you've testified about?

2 A. Yes.

3 Q. I know on the front cover it's Colonial
4 Williamsburg Company, is what it's addressed to?

5 A. Correct.

6 Q. Can you describe the process by which
7 this is done?

8 A. Sure. Our research department will
9 research a company using many different research
10 tools, like LexisNexis and Hoover's and many other
11 tools available to them as well as other internal
12 information to put together a document that's
13 relative -- relevant to the prospecting
14 organization.

15 Q. I know in looking through this document
16 that Colonial Williamsburg is specifically mentioned
17 any number of times under particular categories of
18 research.

19 A. Uh-huh.

20 Q. Is that an example of what you just
21 testified to in terms of learning things about the
22 company that is specifically relevant to them?

1 A. Yes.

2 Q. Could you look at Exhibit Number 4,
3 please? I think you said this Exhibit 4 is
4 something that's not left with a prospect?

5 A. Correct.

6 Q. What use is that put to then by the
7 executive director or field executive?

8 A. It's intelligence. It's information on
9 how involved this company is and where they're
10 involved. It talks about how, if they have any
11 affiliates, is it a private or a public company? It
12 often helps them organize how they make the pitch to
13 the company. It's intelligence.

14 Q. Now I would like to show you a document
15 which bears the production numbers USCC54520
16 through -- well, 54547, but there's two pages that
17 do not bear any production numbers at all on the
18 back of that document. I can show you the original.
19 I believe just because it's at the back of the
20 document.

21 I ask if you can identify the document
22 I've just shown you?

1 A. Sure. This is our membership brochure
2 for a small business. So when a small business
3 becomes a member, they'll receive this as an
4 acknowledgment kit.

5 Q. This is -- we've previously seen an
6 acknowledgement kit for the mid-cap?

7 A. Correct.

8 Q. And this is the functional equivalent for
9 a small business?

10 A. Yes.

11 MR. COLBERT: I would like to have this
12 marked as Cole, I believe we're up to 5, Cole
13 Exhibit 5.

14 (Cole Exhibit No. 5
15 was marked for
16 identification.)

17 BY MR. COLBERT:

18 Q. I would like to show you documents which
19 have been marked as or bears the production numbers
20 USCC54548 through 549. There are multiple duplicate
21 pages in this which represent carbons, I believe.

22 Could you identify the document which

1 I've just handed you?

2 A. This is the small business application
3 for membership.

4 Q. So this would be, again the equivalent --
5 we've seen an application for mid-market. This
6 would be the application for small business?

7 A. Correct.

8 MR. COLBERT: I would like to have this
9 marked as Cole Exhibit 6.

10 (Cole Exhibit No. 6
11 was marked for
12 identification.)

13 BY MR. COLBERT:

14 Q. I would like to now show you documents
15 which bears production numbers USCC54550 to 51 and
16 ask if you can identify that document, please?

17 A. Sure. This is a prospecting piece for
18 companies interested in finding out more about
19 membership opportunities.

20 Q. Can you describe what you mean by
21 prospecting piece?

22 A. It's left -- for instance, we would use

1 it at events on a table if somebody wanted to come
2 back and learn how to join the U.S. Chamber of
3 Commerce. So it's used that particular way. The
4 field, the field directors may also use it. I just
5 don't know to what extent they leave it behind. But
6 it's used in prospecting and it doesn't really
7 retain -- it's not just for small business. We can
8 use this for our mid-market as well.

9 MR. COLBERT: I would like to have marked
10 as Cole Exhibit 7, I believe, the document with
11 numbers 54550 and 51.

12 (Cole Exhibit No. 7
13 was marked for
14 identification.)

15 BY MR. COLBERT:

16 Q. I would like to show you a document which
17 bears production number USCC54552 and ask if you can
18 identify it?

19 A. A marketing piece advertising our Small
20 Business Summit that occurred in May.

21 Q. Can you tell me what the Small Business
22 Submit is?

1 A. It's an event that we invite all of our
2 small business members to. It's two, two and a half
3 days of speakers and workshops for how to, how to,
4 piece of their business. It's an annual event.

5 Q. And so Exhibit -- well, the document
6 54552 represents just the one for 2007?

7 A. Correct. Yes.

8 Q. I would like to have marked as Cole
9 Exhibit 8 the document you just identified.

10 (Cole Exhibit No. 8
11 was marked for
12 identification.)

13 BY MR. COLBERT:

14 Q. I would now like to show you a document
15 which bears production numbers USCC54554 through 558
16 and ask if you can identify that document as well?

17 A. There are a couple of different things in
18 here. Can I go through them one at a time?

19 Q. Yes. Please. Identify, if you would,
20 with the number at the bottom of the page, what
21 we're looking at?

22 A. Sure. 54554 through 58 is a brochure.

1 MR. ELISEEV: I don't have it.

2 MR. KANE: It should be behind the 2007
3 document. The next page, the second page.

4 MR. ELISEEV: Right here?

5 MR. COLBERT: 554 through 558, is what we
6 are talking about.

7 MR. ELISEEV: That's part of 8?

8 MR. COLBERT: We haven't marked this yet.

9 MS. PIETRINI: No. No. What you did was
10 the 52 was Exhibit 8 and it was clipped together.
11 That's where the confusion is.

12 MR. COLBERT: Exhibit 8 was just 552
13 standing alone. And there is some other stuff in
14 the back of that that's going to be 10 or something.

15 Q. So you're now talking about 554 through
16 558, Ms. Cole?

17 A. Yes.

18 Q. Could you please identify what's
19 represented by those pages?

20 A. This is a marketing piece to small
21 businesses that describes some of the sponsorship
22 opportunities that are available to them as a

1 member.

2 Q. What do you mean by sponsorship
3 opportunities?

4 A. Well, they can -- for instance, it talks
5 about a directory, it talks about if they buy a
6 particular level of sponsorship they get certain,
7 certain things that get sponsorship, like
8 advertisements on the Website or in the publication,
9 et cetera. So depending on how much you pay depends
10 on how much sponsorship opportunities you'll get.

11 Q. Well, let's take a look at page 555 for a
12 moment, if you would, as an example of this. There
13 is one block at the bottom left, small business
14 connections director.

15 Do you see that?

16 A. Yes.

17 Q. Can you describe for the record what that
18 is?

19 A. I don't know much about this particular
20 product, other than what I could read here. This is
21 sponsored by our communications department. But it
22 is -- if you buy -- what I understand the directory

1 to be is when you buy this particular level of
2 membership you can have your business listed in this
3 directory.

4 Q. And there are other levels of
5 sponsorship, for example, set out in this document
6 with different levels of --

7 A. Product.

8 Q. -- opportunities?

9 A. Yes. The platinum, gold and silver
10 sponsorship opportunities.

11 Q. And if you look at the last page, the
12 next to last page, 557?

13 A. Yes.

14 Q. Is that a, can you describe what that is?

15 A. That would be the mechanism for them to
16 get information or to buy one of these sponsorships.

17 MR. COLBERT: I would like to have marked
18 then as Cole Exhibit 9, the document just
19 identified.

20 A. This is a follow-up -- we'll separate
21 them?

22 Q. Yeah.

1 A. Okay.

2 MR. COLBERT: The document just
3 identified as USCC54554 through 558.

4 (Cole Exhibit No. 9
5 was marked for
6 identification.)

7 A. The next stack of --

8 MR. COLBERT: We have to wait for him to
9 get it all down. Sorry.

10 BY MR. COLBERT:

11 Q. I would now like to show you a group of
12 documents bearing the production numbers USCC54559
13 through 564, which I believe are in your right hand
14 and on the table in front of you.

15 A. Yes.

16 Q. 559 through 564.

17 A. Through 564. Yes.

18 Q. All right.

19 A. Which are what we call policy flashes.

20 These are used in our tele-sales division for
21 special fund raising efforts. When they have spoken
22 to a prospect for a special fund raising, oftentimes

1 they want more information. This is mailed to those
2 interested parties.

3 These are also used in the field as leave
4 behind in some cases if they're interested in a
5 particular issue that affects their business. So
6 they're marketing materials used in prospecting a
7 membership.

8 Q. I note looking at the documents, for
9 example, on 559, the title is America Needs a
10 Balanced and Effective National Energy Plan to
11 Assure Future Prosperity.

12 Do you see that?

13 A. Yes.

14 Q. And the next page, 560, is, the title is
15 America's Real Solution to Healthcare Prices. And
16 561 is Fighting the Trial Bar and Winning, et
17 cetera.

18 Are those examples of the particular
19 interests that you were talking about just a minute
20 ago?

21 A. Yes.

22 MS. PIETRINI: Objection; leading.

1 Objection. Counsel is testifying, strike the
2 preamble.

3 BY MR. COLBERT:

4 Q. Would you read the answer before last
5 back into the record?

6 - - -

7 (Whereupon the following portion of the
8 testimony was repeated by the Court Reporter:

9 ANSWER: Which are what we call policy
10 flashes. These are used in our tele-sales division
11 for special fund raising efforts. When they have
12 spoken to a prospect for a special fund raising,
13 oftentimes they want more information. This is
14 mailed to those interested parties.

15 These are also used in the field as leave
16 behind in some cases if they're interested in a
17 particular issue that affects their business. So
18 they're marketing materials used in prospecting a
19 membership.)

20 BY MR. COLBERT:

21 Q. Looking at the documents in front of you,
22 is there anything in those documents that tell you

1 or indicate to you what the special fund raisings
2 are that you just testified to?

3 A. Yes. They all have a particular
4 interest.

5 Q. Can you point, for example, on page 559,
6 what the interest disclosed in that document is?

7 A. The National Energy Plan.

8 Q. And 560?

9 A. Healthcare.

10 Q. And 561?

11 A. Fighting the Trial Bar.

12 Q. And 562?

13 A. Taxes.

14 Q. Thank very much.

15 MR. COLBERT: I would like to have marked
16 as Cole Exhibit 10 the documents just identified as
17 a group.

18 (Cole Exhibit No. 10
19 was marked for
20 identification.)

21 BY MR. COLBERT:

22 Q. I now would like to show you a set of

1 documents which bear the production numbers
2 USCC54565 through 58 -- excuse me -- through 591 and
3 ask you if can identify those documents?

4 A. Yes. This is what we call the
5 presentation kit. The field directors use this when
6 we have a prospect. They kind of flip through it
7 with a script that they already have memorized to
8 talk about our value proposition.

9 Q. What do you mean by value proposition?

10 A. Our advocacy and lobbying efforts and the
11 benefits that they receive as a member.

12 Q. Is this used in the small business sales?

13 A. Yes.

14 MR. COLBERT: I would like to have marked
15 as Cole Exhibit 11, the document just identified by
16 the witness.

17 (Cole Exhibit No. 11
18 was marked for
19 identification.)

20 BY MR. COLBERT:

21 Q. I would ask you, taking a look at Cole
22 Exhibit 11, are there any portions of that that

1 correspond to the policy flashes about which you
2 previously testified?

3 A. Yes. It reinforces those. Legal Reform,
4 for instance, on page 71, and Qualified Work Force
5 on 70, Regulatory Burdens, 69; Tax Relief, 68; going
6 backwards.

7 This definitely corresponds with the
8 policy questions, reinforces.

9 Q. I would like now to show you a set of
10 documents which bear the production numbers 54498
11 through 54519 and ask if you can identify those
12 documents, please?

13 A. They are also what is used in our
14 tele-sales division for special fund raising. This
15 is an electronic version that would be either
16 e-mailed to them or faxed to them.

17 MR. COLBERT: I would like to have marked
18 then as Cole Exhibit 12, the documents just
19 identified by the witness.

20 (Cole Exhibit No. 12
21 was marked for
22 identification.)

1 BY MR. COLBERT:

2 Q. I show you Exhibit 12. I believe you
3 testified earlier about the tele-sales division.

4 That's located where?

5 A. Dallas.

6 Q. And they market to small businesses?

7 A. Correct.

8 Q. I believe you previously testified you
9 held the current position for two years?

10 A. Over two years, yes.

11 Q. Did you previously have a position with
12 the U.S. Chamber of Commerce?

13 A. Yes, I did. I was the managing director
14 of production and purchasing for the corporate
15 communications department.

16 Q. Will you briefly describe your
17 responsibilities in that role?

18 A. Yes. It centered mostly on procurement
19 for the U.S. Chamber of Commerce and managing the
20 art department for the communications division.

21 Q. All right. Now, I have some documents
22 from you that I would like you to identify, if you

1 would. I would like to start with document
2 USCC50285 through 257. 50 -- strike that.

3 All right. The first three pages of this
4 document bear production numbers USCC50285 through
5 287 and the remaining pages start with 50235 through
6 257.

7 I would like you to take a minute and ask
8 if you can identify the documents before you?

9 A. Sure. This is -- this is a document that
10 discusses findings that the New Media Strategies
11 Company uncovered when they were asked to do some
12 analysis for the Chamber of Commerce on brand, our
13 brand awareness.

14 Q. Now, do you know where this document came
15 from, the document in front of you?

16 A. It came from New Media Strategies.

17 Q. And did you -- have you seen that
18 document before?

19 A. I have.

20 Q. Did you personally gather that document
21 to produce in this case?

22 A. Yes, I did.

1 Q. Okay. Did you have familiarity with it
2 at the time it occurred?

3 A. Yes, I did.

4 Q. Did you have some responsibility with
5 respect to it?

6 A. Yes. I helped execute the research.

7 MR. COLBERT: I would like to have marked
8 as Exhibit Number 13, Cole Exhibit 13, the document
9 just identified.

10 (Cole Exhibit No. 13
11 was marked for
12 identification.)

13 BY MR. COLBERT:

14 Q. I'll now hand you again Cole Exhibit 13.

15 And ask you, would you look at the first
16 three pages and just identify those three?

17 A. This talks about the company and what
18 they do.

19 Q. Then if you would look at the remaining
20 pages beginning at 50235 through 257, could you
21 identify what that represents?

22 A. Yeah. The executive summary to the

1 research.

2 Q. Now, can you describe again, please, in
3 more detail, the purpose for having conducted this
4 survey?

5 A. We were seeking to understand our brand
6 awareness and to collect intelligence about what
7 others, you know, what the buzz on what we -- the
8 buzz on the Chamber of Commerce. So seeking
9 intelligence, understanding our level of brand
10 awareness through this particular collection. This
11 company collects data by going out to chat rooms and
12 message boards to seek information.

13 Q. And can you describe your involvement
14 with retaining New Media Strategies and having the
15 survey conducted?

16 A. We, we, the communications department,
17 were -- we were asked by Suzanne Clark, at the time,
18 to execute this particular project.

19 Q. Did you have any participation in
20 retaining New Media Strategies?

21 A. Yes. I helped write the contract and set
22 the objectives.

1 Q. When you say you set the objectives, what
2 do you mean?

3 A. Well, helped decide, with their input as
4 well as others, what it was we were seeking to find
5 out.

6 Q. Did you receive the finished product, the
7 executive summary, at the time it was rendered to
8 the U.S. Chamber of Commerce?

9 A. Yes.

10 Q. Did you request them to -- did you direct
11 them as to what they should investigate or how they
12 should conduct the investigation?

13 A. Not how they should conduct the
14 investigation, but we had many conversations on what
15 we were trying to uncover.

16 Q. Now, do you recall what the New Media
17 Strategies' findings were with regard to the U.S.
18 Chamber's brand image awareness?

19 A. Yes. Top line, what I recall, we have a
20 very high and positive brand awareness or brand
21 recognition, as well as name ID. We are known for
22 our core competencies, that being advocacy and

1 lobbying.

2 Q. I would now like to show you a group of
3 documents which bear the production numbers
4 USCC50091 through 50097, and ask if you can identify
5 that document, please?

6 A. This is the key findings for the
7 executive summary for research that the Winston
8 Group produced for the U.S. Chamber of Commerce.

9 Q. Can you describe who the Winston Group
10 is?

11 A. Yeah. They are a research firm with a
12 lot of experience in finding out information about
13 membership and what's going on out there in terms
14 of, in terms of that.

15 Q. Okay. And for what purpose was this
16 survey conducted?

17 A. This was specifically designed to find
18 out how we could retain and attract new members for
19 small business.

20 Q. And did you have any participation with
21 regard to the survey conducted by the Winston Group?

22 A. Yes, I did.

1 MR. COLBERT: I would like to have marked
2 as Cole Exhibit 14, the document that was just
3 identified.

4 (Cole Exhibit No. 14
5 was marked for
6 identification.)

7 BY MR. COLBERT:

8 Q. I'll hand you back what's now been marked
9 as Cole 14, Ms. Cole. I'm going to ask you, was
10 this survey -- strike that.

11 Was this study conducted in the same
12 fashion as the New Media Strategies' study?

13 A. No.

14 Q. Can you please describe how this survey
15 was done?

16 A. This survey went out a couple of ways.
17 The survey went out -- we had focus groups that we
18 invited, lapsed members, members who used to be
19 members of ours, as well as current members. We had
20 one-on-one interviews with our field directors and
21 prospects and we also had a telephone survey to
22 members and prospects.

1 Q. Do you find -- is that survey technique
2 disclosed in the document that's before you? Is it
3 described?

4 A. Yes, it is.

5 Q. Is it under methodology?

6 A. Yes. It's under methodology. Focus
7 groups, one-on-one interviews, national survey, as
8 well as the one-on-one interviews with sales
9 representatives.

10 Q. And can you describe your personal
11 involvement in this study or survey?

12 A. Myself, along with other people in
13 corporate communications, attended a number of the
14 focus groups and read a lot of the transcripts that
15 transpired from that and read the other information
16 provided to us from the Winston Group.

17 Q. Did you meet with representatives of the
18 Winston Group prior to conducting the study?

19 A. Yes.

20 Q. And what was your involvement in those
21 meetings?

22 A. To understand the objectives we were

1 trying to get to with this particular research.

2 Q. And did you receive the report, the
3 resulting report at the time it was rendered to the
4 U.S. Chamber of Commerce?

5 A. Yes, I did.

6 Q. Looking at both, what's been marked as
7 Exhibit 14, the Winston survey, and Exhibit 13,
8 which is the New Media Strategies, were these
9 studies, these reports, circulated within the U.S.
10 Chamber of Commerce management?

11 A. I know this, Suzanne Clark received
12 copies of both of these as well as management in the
13 communications department. Where they went from
14 there, I can't speak to.

15 Q. Now, after you received, U.S. Chamber of
16 Commerce received the Winston Group report, for
17 example, were -- did the U.S. Chamber of Commerce
18 take any steps based on what you learned from the
19 Winston survey?

20 A. Yes, we did.

21 Q. Could you describe it?

22 A. For instance, there seemed to be a

1 disconnect with our benefits, the value, a
2 disconnect with the value, so we put more emphasis
3 and changed our communication strategy around
4 benefits offered to members and provide a, different
5 levels of communication to them based on what we
6 learned from this.

7 Q. And those changes were implemented?

8 A. They were implemented. We also put more
9 emphasis on our first-year members in terms of
10 retention and made some changes to how we retain our
11 current membership, yes.

12 Q. The parties in this dispute include the
13 U.S. Chamber of Commerce and the U.S. Hispanic
14 Chamber of Commerce. Are you aware of that?

15 A. Yes. I'm aware of that.

16 Q. What was the first time you ever heard of
17 the U.S. Hispanic Chamber of Commerce?

18 A. When I was asked -- when I was in the
19 communications department, I was asked to provide
20 some information on this particular topic during
21 litigation.

22 Q. You're talking about the litigation, you

1 mean the case that you're appearing to testify about
2 today?

3 A. Correct. That was the first time I had
4 heard of it.

5 Q. Do you have any understanding of what the
6 U.S. Hispanic Chamber of Commerce does?

7 A. No, I don't.

8 Q. There's also an organization involved
9 called the U.S. Hispanic Chamber of Commerce
10 Foundation.

11 Have you ever heard of that organization
12 before?

13 A. No.

14 Q. So I'll ask you the question, do you have
15 an understanding of what the U.S. Hispanic Chamber
16 of Commerce Foundation does?

17 A. No. I do not.

18 MR. COLBERT: I would like to move the
19 admission of Exhibits Cole 1 through 14 at this
20 time.

21 MR. ELISEEV: I'll object to foundation.

22 MR. COLBERT: Do you have any specific

1 objections by exhibit?

2 MR. ELISEEV: All of them.

3 MR. COLBERT: Fine. Your witness. Do
4 you want to take a short five-minute break?

5 MR. ELISEEV: We will take ten. Thanks.

6 MR. COLBERT: Okay.

7 - - -

8 (Recessed at 9:51 a.m.)

9 (Reconvened at 10:26 a.m.)

10 - - -

11 BY MR. ELISEEV:

12 Q. Good morning. Ms. Cole, can you give me
13 your educational background, just briefly?

14 A. Yes. I attended Michigan State
15 University as well as Grand Valley State College in
16 Michigan before moving to this area and then
17 attending, actually, Northern Virginia Community
18 College, where I started to get interested in art,
19 in graphic arts.

20 Q. So you got a Bachelor's?

21 A. No, I got an Associate's. I never
22 finished my Bachelor's.

1 Q. An Associate's in Arts?

2 A. Advertising Design.

3 Q. When did you move to the D.C. area?

4 A. '81.

5 Q. And you've been living in D.C. since '81?

6 A. Yes. I live actually in Alexandria.

7 Q. When did you start working for the United
8 States Chamber of Commerce?

9 A. November 2000.

10 Q. And what was your position at the United
11 States --

12 A. I was hired as managing director of
13 purchasing and procurement.

14 Q. What exactly did that position entail in
15 terms of responsibilities?

16 A. It -- I was responsible for much of the
17 purchasing within the organization, excluding IT,
18 software and hardware purchases. But it was mostly
19 printing and graphics purchasing, as well as running
20 the art department that supported the Chamber of
21 Commerce.

22 Q. So what exactly were the products that

1 you were purchasing?

2 A. We were purchasing printing products,
3 many of the products that you see in front of you.
4 We were purchasing mailing and distribution services
5 for the Chamber of Commerce, and producing many of
6 the publications through the art department.

7 Q. What was your experience prior to getting
8 that position, because you came as a managing
9 director?

10 A. I was the vice president of American
11 Trucking Associations. I was their vice president
12 of printing and graphics services.

13 Q. Was your position at the U.S. Chamber of
14 Commerce headquarters?

15 A. Yes.

16 Q. Ever since you started there?

17 A. Yes.

18 Q. Which is somewhere across from the White
19 House?

20 A. 1615 H Street.

21 Q. When did you move on to your current
22 position?

1 A. I don't know the exact date, but it was
2 about two, two and a half years ago. It was over
3 two years ago.

4 Q. What is the exact name of your current
5 position?

6 A. It's vice president of membership and
7 sales operations.

8 Q. And is there a particular department that
9 you are in charge of?

10 A. I mean, I have a staff that supports my
11 initiatives, and that is support to the sales and
12 membership base at the Chamber.

13 Q. Is there more marketing components to
14 your current position as compared to your prior
15 position? Or it's more or less the same, you just
16 moved up in the same area of business?

17 A. No. I no longer oversee the actual
18 employees in the art department anymore. I oversee
19 much of the activities in the small business and
20 mid-market arena. There is a marketing component to
21 that.

22 Q. How large is that marketing component?

1 A. It's working --

2 MR. COLBERT: Objection to the form of
3 the question; vague.

4 BY MR. ELISEEV:

5 Q. You can answer, if you understand.

6 A. Ask the question again.

7 Q. What part of your responsibilities are
8 taken by marketing?

9 A. I work in conjunction with the
10 communications department, who have marketing
11 experts on their staff, to produce documents that
12 the sales team needs to do their job. I work in
13 conjunction with others.

14 Q. I see. Your day-to-day responsibilities
15 include direct communication with prospective
16 members of the United States Chamber of Commerce?

17 A. No. Not my responsibilities.

18 Q. Do you have people working under you
19 whose responsibility is direct communication with
20 prospective or current members of the United States
21 Chamber of Commerce?

22 A. Yes.

1 Q. How large is that staff?

2 A. I'm going to break it into pieces a
3 little bit.

4 Q. How about the staff of people who
5 actually do direct marketing or direct
6 communications?

7 MR. COLBERT: Object to the form of the
8 question and lack of foundation. You can answer.

9 A. Sorry? I may answer?

10 MR. COLBERT: You may, if you understand
11 the question.

12 A. I'll answer it the way I think I
13 understand it. We have a customer service
14 department that services small business members.
15 There are two people who answer the phones for that
16 1-800 line. Calls also come into that line for
17 possibly Chambers of Commerces and associations who
18 may have questions about membership.

19 I oversee what we call corporate relation
20 managers. They help support the executive directors
21 in terms of the mid-market space. They may, in
22 fact, talk with members or prospects. And I have a

1 membership manager who speaks directly to the
2 mid-cap members. So three or four people
3 interacting directly with members and prospects.

4 Q. What is the purpose of that 800 line that
5 you just mentioned?

6 A. It's a support line for our members.

7 Q. Support in any particular area or general
8 support?

9 A. General support in terms of if they have
10 questions about membership or questions about a
11 specific topic, that's where we tend to field and
12 answer the questions.

13 Q. And those would be members, small
14 business owners or mid-size business owners or
15 anybody?

16 A. Well, anybody can get ahold of the number
17 and call. But this is the number we advertise to
18 our members to call if they have questions.

19 Q. Any members, across the board?

20 A. No. Small business members.

21 Q. Small business members?

22 A. Right. Mid-market has its own membership

1 manager that manages the member communications.

2 This is mostly used for small business -- the
3 customer service 1-800 line is mostly used for small
4 business conversations. However, other calls do
5 come through that line. We get occasional national
6 account questions, occasional Chamber of Commerce
7 questions, so it's a starting point in many cases.

8 Q. You mentioned there are two people who
9 service that 800 line?

10 A. Correct.

11 Q. And they report directly to you?

12 A. They report to a director who reports
13 directly to me.

14 Q. What's the name of the director?

15 A. Kim Jones.

16 Q. Is that a busy line? Do you guys get at
17 lot of calls daily?

18 MR. COLBERT: I'm going to object, beyond
19 the scope of direct. I will let her continue to
20 answer, but you asked a specific question that was
21 not on direct. Go ahead.

22 A. Busy, I don't know how to term what busy

1 would be, but they keep busy.

2 Q. More than a hundred calls a day roughly?

3 A. I don't know the answer, don't know the
4 specific answer to that.

5 Q. Can you guess?

6 MR. COLBERT: I object to the question
7 asking to speculate or guess.

8 A. I don't know the answer to the volume.

9 Q. Okay. You mentioned during your direct
10 testimony that you found out about the United States
11 Hispanic Chamber of Commerce and the United States
12 Hispanic Chamber of Commerce Foundation during the
13 present proceeding; correct?

14 A. Present proceeding?

15 Q. Between United States Chamber of Commerce
16 and my client?

17 A. I believe -- I mean I was asked -- I got
18 involved with this a number of years ago when I
19 think the litigation began. Is that an answer to
20 your question?

21 Q. Yes.

22 A. Okay.

1 Q. Do you remember exactly when that was?

2 A. No, I don't. It was when I was with the
3 communications department.

4 Q. So that was at least two and a half years
5 ago?

6 A. At least, yes.

7 Q. Sometime in 2004?

8 A. I can't -- I don't know. I did not look
9 at that.

10 Q. How did you learn about United States
11 Hispanic Chamber of Commerce? In other words, who
12 were you talking to or --

13 A. We were asked by our legal department to
14 collect any information we have that may show an
15 interaction with the United States Hispanic Chamber
16 of Commerce.

17 Q. Same with respect to United States
18 Hispanic Chamber of Commerce Foundation?

19 MR. COLBERT: Object to the form of
20 question. Lack of foundation, contrary to prior
21 testimony. You may answer.

22 A. There was no specifics for that, with

1 respect to that question.

2 Q. What materials did you collect in
3 response to that request?

4 MR. COLBERT: Objection; beyond the scope
5 of direct. You may answer.

6 A. I don't recall all of them. This was
7 three or four years ago, and I don't recall
8 everything.

9 Q. Do you remember the kind of materials
10 those were?

11 MR. COLBERT: Again I'll continue the
12 objection to the fact that you're way beyond the
13 scope of direct. You're taking discovery, you're
14 not doing a cross-examination. It's improper. I'll
15 let her answer.

16 A. I don't recall.

17 Q. The marketing materials that were
18 introduced as exhibits, were those prepared with
19 your direct participation?

20 MR. COLBERT: Object to form of the
21 question.

22 A. With my participation either through

1 myself or my staff.

2 Q. Okay. I would like to ask a question
3 about Exhibit 1.

4 A. Yes. That's different than this one.

5 Q. Would you tell me what those committees,
6 councils and task forces are within the United
7 States Chamber of Commerce?

8 A. They are groups, policy groups or
9 councils set up to further our pro, you know, our
10 pro-business objectives.

11 Q. Exhibit 1 is a marketing material sent
12 out to small and mid-size --

13 A. No. Mid-size only.

14 MR. COLBERT: Object to the form of the
15 question. Mischaracterizes prior testimony.

16 Q. And starting on page 54423, is that the
17 list of all councils, committees and task forces
18 that are included under the umbrella of the United
19 States Chamber of Commerce?

20 A. I don't know the answer to that. I don't
21 know if it's inclusive. Ones that are relevant.

22 Q. Relevant to what?

1 A. The mid-market.

2 Q. Mid-market. So I understand that these
3 are the specific councils and task forces that are
4 built up by specific topics and areas of interest of
5 mid-market?

6 A. Yes.

7 Q. Mid-size businesses; right?

8 MR. COLBERT: Answer the question.

9 A. Yes.

10 Q. I notice there are task forces and
11 councils that are specifically targeting particular
12 ethnic groups; is that correct?

13 MR. COLBERT: Could you read that
14 question back, please?

15 - - -

16 (Whereupon the following portion of the
17 testimony was repeated by the Court Reporter:

18 QUESTION: I notice there are task forces
19 and councils that are specifically targeting
20 particular ethnic groups; is that correct?)

21 - - -

22 MR. COLBERT: I object to the form of the

1 question to the extent that it characterizes the
2 documents.

3 Q. For example -- is that correct?

4 MR. COLBERT: Could you restate the
5 question again?

6 MR. ELISEEV: I'll reask it.

7 MR. COLBERT: Okay.

8 Q. Is there particular councils or task
9 forces on that list or this document that target
10 businesses that are owned or operated by specific
11 ethnic, by individuals of specific ethnic decent; is
12 that correct?

13 MR. COLBERT: I'll object to form of the
14 question. You may answer.

15 A. Can you point to one?

16 Q. Page 54427, Middle East Subcommittee.

17 A. Yeah, I --

18 Q. Or page 54425.

19 MR. COLBERT: Are you not going to ask
20 her about --

21 MR. ELISEEV: I'll give two examples and
22 she can address both examples.

1 MR. COLBERT: Then I'll object on
2 compound. Ask one at a time.

3 MR. ELISEEV: Okay.

4 Q. Go ahead. You can address the Middle
5 East Subcommittee.

6 MR. COLBERT: I did not hear a question.
7 If you read the question back, and let me hear it
8 again, I hear a point to a particular committee, but
9 I don't hear a question about it.

10 MR. ELISEEV: Can you read the question
11 back?

12 - - -

13 (Whereupon the following portion of the
14 testimony was repeated by the Court Reporter:

15 QUESTION: Is there particular councils
16 or task forces on that list or this document that
17 target businesses that are owned or operated by
18 specific ethnic, by individuals of specific ethnic
19 decent; is that correct?)

20 - - -

21 MR. COLBERT: I believe at that point the
22 witness asked to have one pointed to her.

1 BY MR. ELISEEV:

2 Q. And she can answer that question on that
3 point.

4 A. I am on page 27 and I'm looking at Middle
5 East Subcommittee.

6 This is a regional, it's based on
7 regional business. And ethnic, I don't know -- I
8 don't quite understand where I'm going with that
9 comment, but -- and I'm not one to speak directly to
10 what these councils and committees are made up of.
11 We collect the information from those individual
12 departments.

13 Q. You collect information from a --

14 A. These departments provide us these
15 descriptions to put into this document.

16 Q. I see. Are you aware of any task forces
17 or groups or councils within the United States
18 Chamber of Commerce that target businesses that are
19 owned or operated by individuals of Hispanic decent?

20 A. No, I am not.

21 Q. Are you aware of any task forces,
22 councils or groups or committees that target

1 businesses that are, that target or service the
2 Hispanic community?

3 A. No, I am not.

4 Q. Are you aware of any marketing materials
5 that are prepared by the United States Chamber of
6 Commerce that specifically target businesses --

7 A. I'm not.

8 Q. -- Hispanic businesses? And I will use,
9 from now on I will use the phrase Hispanic
10 businesses that denote businesses that are either
11 owned or operated by individuals of Hispanic decent
12 or businesses that cater to the Hispanic community.
13 Are you aware of -- now, the question is --

14 MR. COLBERT: I'll object to the form of
15 the question as vague and indefinite and I don't
16 understand what you mean by cater to the Hispanic
17 community. So you have a tri-part type complex
18 question. I object to the form of the question and
19 the characterization.

20 BY MR. ELISEEV:

21 Q. Ms. Cole, do you understand what I mean
22 by Hispanic businesses?

1 A. No, not really. Owned and operated
2 Hispanic businesses? I'm not really sure what your
3 definition --

4 Q. What would be your definition of Hispanic
5 business?

6 MR. COLBERT: Object to the question.
7 Goes beyond the scope of the direct, but you may
8 answer.

9 A. I don't have one.

10 Q. You don't have one. My definition would
11 be a business that's owned or operated by
12 individuals of Hispanic decent or businesses that
13 specifically service the Hispanic community.

14 A. Okay.

15 Q. Okay.

16 MR. COLBERT: I object to the form of the
17 question. It's compound and complex. It's two
18 different characteristics. It makes it difficult to
19 answer and goes beyond the scope of direct. To the
20 extent that you understand it, you may answer.

21 BY MR. ELISEEV:

22 Q. That was not a question.

1 A. Definition.

2 Q. So that every time I don't have to
3 explain what it is. That's the phrase.

4 So within the United States Chamber of
5 Commerce, are there any marketing materials that are
6 prepared by the U.S. Chamber of Commerce that
7 specifically target Hispanic businesses?

8 A. I am not aware of any.

9 MR. COLBERT: I'll object to the form of
10 the question.

11 Q. Okay.

12 MR. COLBERT: Just so I don't have to do
13 it every time, it's a continuing objection.

14 BY MR. ELISEEV:

15 Q. Are there any marketing materials that
16 are written in Spanish?

17 A. I'm not aware of any.

18 Q. Are there any marketing materials
19 prepared within the United States Chamber of
20 Commerce that are written in language other than
21 English?

22 A. I am not aware of any.

1 Q. So all marketing materials are --

2 A. Under my scope and purview, I'm not aware
3 of any. It doesn't mean -- I just am not aware of
4 any.

5 Q. But you haven't heard from anybody at the
6 United States Chamber of Commerce that any marketing
7 materials are prepared in any language other than
8 English; right?

9 MR. COLBERT: Object to going beyond the
10 scope of direct. You may answer.

11 A. No, I have not.

12 Q. Okay. Can you look at Exhibit Number 6?
13 What is Exhibit Number 6?

14 A. This is the application for small
15 business.

16 Q. And who is this application prepared for?

17 A. Who prepares it?

18 Q. Who is it distributed to?

19 A. It's distributed to field directors,
20 small business field directors.

21 Q. And who are field directors? What are
22 their responsibilities?

1 A. Their responsibilities are to go from
2 door-to-door selling the United States Chamber of
3 Commerce, store fronts mostly.

4 Q. By door-to-door you mean, you don't mean
5 residential door-to-door?

6 A. Correct. Businesses.

7 Q. Where do field directors get the
8 addresses of those small businesses?

9 A. They get them themselves.

10 Q. Do you know where they get them?

11 A. No, I do not.

12 Q. Do you know if the United States Chamber
13 of Commerce purchases any lists of small business
14 owners?

15 A. No, I do not. What I'm aware of, they do
16 not get lists that target small businesses. I am
17 aware of a test that they're doing to buy lists to
18 help them manage the process, but I can't speak to
19 that. That's new, relatively new.

20 Q. Is this the only application that a
21 business owner would fill out if he or she wants to
22 become a member of the United States Chamber of

1 Commerce?

2 MR. COLBERT: I'll object to the question
3 as asked and answered, mischaracterizes the
4 testimony. You may answer.

5 A. When a field rep sells to a small
6 business, this is the app they will use.

7 Q. Okay. Is there anywhere on this
8 application a question that seeks the business
9 owner's ethnic background?

10 A. Not that I can see.

11 Q. Do you have a version of this application
12 that's prepared in Spanish?

13 A. Not that I'm aware of.

14 Q. Do you have any version of this
15 application that's prepared in any language but
16 English?

17 A. Not that I'm aware of.

18 Q. Okay. Can you tell me more about the
19 tele-sales division?

20 A. Yes. Tele-sales is responsible for
21 calling to renew existing members, to raise special
22 fund raising dollars or SFPs, as we call it, that

1 may center around a specific topic or issue at the
2 time. They also call to renew or rejoin members
3 whose's membership has lapsed. They only do this
4 for the small business segment.

5 Q. How many people are employed in that
6 division?

7 A. I don't know.

8 Q. Do they report to you?

9 A. No, they do not.

10 Q. And you mentioned before that the office
11 of tele-sales is located in Dallas?

12 A. Dallas, Texas. Irving. Actually outside
13 of Dallas. Irving, Texas.

14 Q. Do you know if that division employs
15 individuals that are native Hispanic speakers?

16 A. Don't know.

17 Q. Can you please take a look at the exhibit
18 number 13? Can you describe to me what New Media
19 Strategies is?

20 A. It's a research firm that specializes in
21 online marketing intelligence.

22 Q. Were you the person at the United States

1 Chamber of Commerce who directly hired New Media?

2 A. Myself and my VP at the time, yes.

3 Q. Have you worked with them before?

4 A. No.

5 Q. How did you pick them versus other
6 certain companies?

7 A. It was not selected by myself or my vice
8 president. It was selected by Suzanne Clark, who
9 oversaw the small business division.

10 Q. What was the date of that survey?

11 A. It was late 2002, last quarter 2002.

12 Q. Have you conducted any surveys of similar
13 kind since that date?

14 A. Not that I'm aware of.

15 Q. What was the reason for hiring them?

16 A. To find out about our brand awareness.

17 Q. Why was there a need for such a test?

18 A. I don't know.

19 Q. When you say brand, what do you mean by
20 that?

21 A. What people are saying about the U.S.
22 Chamber of Commerce, what the buzz is about the U.S.

1 Chamber of Commerce.

2 Q. You mentioned that you worked directly
3 with New Media along the process?

4 A. That's correct.

5 Q. How long did that process take?

6 A. It was a couple of months. I can't be
7 more specific than that. I don't recall.

8 Q. Are you familiar with the United States
9 Chamber of Commerce logo?

10 A. Yes, I am.

11 Q. Can you describe it?

12 A. It's a spirit of enterprise with an eagle
13 in the middle of it. It's red and blue and black.

14 Q. It's a circle, right?

15 A. Yes.

16 Q. Was part of the survey testing the
17 awareness of that logo?

18 A. I don't know. I don't recall.

19 Q. Do you remember if any questions that
20 were included in the survey mentioned the logo?

21 MR. COLBERT: Object to the form of the
22 question. Mischaracterizes the testimony and the

1 document. You may respond.

2 A. I would have to look to see.

3 Q. Can you look and see?

4 A. I don't see it in here. Unless I missed
5 it, I don't --

6 Q. Could it have been in the redacted
7 portions of the document?

8 A. Don't know.

9 Q. Do you know what the redacted portions
10 are? Do you see there's more than half of the
11 document that is redacted? Do you know what exactly
12 was redacted?

13 A. No, I do not.

14 Q. Do you know why it was redacted?

15 A. I do not.

16 Q. Were you the person who provided this
17 document to your attorneys?

18 A. Yes, I did.

19 Q. And you provided them in its full
20 version?

21 A. Yes, I did.

22 Q. When you mentioned that the survey was

1 conducted to understand what the buzz is among
2 people with respect to the United States Chamber of
3 Commerce, you meant by that what the buzz is about
4 the name of the United States Chamber of Commerce or
5 its products and support services?

6 A. When I refer to brand, it refers to all
7 of that.

8 Q. Including products and services?

9 A. Products, services, yes. Yes. The
10 image, the influence, the core competencies, all of
11 that.

12 Q. Was there any separation in the survey
13 along the lines of name, products, services?

14 A. Don't recall.

15 Q. Do you know the universe that was tested
16 as part of the survey?

17 A. Yeah. I believe it's -- may I look at
18 that document?

19 Q. Sure.

20 A. It went out to small business owners,
21 investors, influencers, political insiders, and the
22 general public.

1 Q. Was there a questionnaire for the survey?

2 A. Don't know.

3 Q. You don't recall working on the
4 questionnaire?

5 A. I was part of initially coming up with
6 the questions we wanted to ask this particular, for
7 this particular survey. I don't have those
8 questions, don't recall what those questions were.

9 However, how they executed that I'm not
10 aware of, whether they asked specific questions or
11 not. I'm not sure how they executed.

12 Q. Do you know if that questionnaire was
13 produced in this litigation along with this
14 document?

15 A. Do not know.

16 Q. Do you recall yourself bringing the
17 questionnaire to your attorneys to be produced in
18 this litigation?

19 A. Do not.

20 Q. You don't recall or you don't know or it
21 was not produced?

22 A. Do not, do not know that it exists, do

1 not recall. I provided this. As far as I recall, I
2 provided this a number years ago for this particular
3 litigation.

4 Q. Do you remember any documents that were
5 provided along with this document that related to
6 the survey?

7 A. This is all I recall.

8 Q. That's all, the only document?

9 A. That's what I recall.

10 Q. When you were working on the survey with
11 the New Media Strategies, do you recall reviewing
12 the list of?

13 A. Do I have a memory of recalling them?
14 Probably. There were a number of meetings in which
15 the question -- how we got to the questions, you
16 know, it included a number of people within the
17 Chamber of Commerce. So there were meetings and
18 conversations how to get to that list of questions.

19 And that list of questions might have
20 been in the contract for them, but I just don't
21 recall, in the objectives for New Media Strategies.

22 Q. Okay. Do you know how the universe of

1 participants was screened?

2 A. No, I do not. Other than the universe
3 they went to.

4 Q. Do you know if the universe of
5 participants included owners of Hispanic businesses?

6 A. Do not know that.

7 Q. Do you know if the universe of
8 participants included owners of businesses of
9 particular ethnic descent?

10 A. Do not know that.

11 Q. Do you know where New Media Strategies
12 got the list of participants, whether small business
13 owners or from other groups that you just named?

14 A. I don't believe they got a list to target
15 for this. They went out to chat rooms, message
16 boards and Websites to obtain their information.

17 Q. Were there any in-person interviews
18 conducted as part of this survey?

19 A. I believe it was all online.

20 Q. You don't believe there were any
21 telephone calls either?

22 A. Not that I'm aware of.

1 Q. Okay. Which page is that that you were
2 just looking at?

3 A. I'm sorry. I was looking at 286 where it
4 talks about, you know, how they, how they execute
5 their product and, you know, they are able to
6 connect with people around the world and influence
7 consumer views and perceptions using, using the
8 Internet to connect with these consumers.

9 I'm pretty sure the research they
10 conducted for us was online research.

11 Q. Do you know which chat rooms or other
12 portals that were visited by the surveyors?

13 A. I do not.

14 Q. Do you know if those chat rooms or
15 portals were part of the United States Chamber of
16 Commerce Websites?

17 MR. COLBERT: Object; lack of foundation.

18 A. I do not know.

19 Q. In other words, I'm wondering where were
20 the chat rooms where the surveyors were asking
21 questions to influencers, for example? Do you know?

22 A. I do not --

1 MR. COLBERT: You may answer.

2 A. I do not know.

3 Q. Do you know what chat rooms where
4 investors or Wall Street financial professionals
5 were questioned?

6 A. No, I do not.

7 Q. So you don't know how any of the
8 participants were selected?

9 A. Correct.

10 Q. You don't know any criteria by which they
11 were selected?

12 A. Correct.

13 Q. Do you know if they -- do you know if the
14 surveyors visited chat rooms that are specific to
15 the business, the Hispanic business community?

16 A. Do not know.

17 Q. Okay. Do you know how the results were
18 tabulated?

19 MR. COLBERT: Object to the form of the
20 question.

21 Q. Do you understand the word tabulated?

22 A. How they came to their conclusions?

1 Q. Yeah, how they were grouped to --

2 A. By the data.

3 Q. By the data.

4 A. By the data they collected.

5 Q. Do you know how exactly they were
6 tabulated?

7 A. No, I do not.

8 Q. Do you know how the results were coded?

9 A. No.

10 Q. Do you know the word coded in the context
11 of surveys?

12 A. No. This is the document we were given.

13 Q. But, nevertheless, you did participate
14 with New Media along the process?

15 A. Yes.

16 Q. What exactly that participation was?
17 What exactly?

18 A. We set the objectives and then we let
19 them go -- then we let them go execute the
20 objectives and bring us back an executive summary.

21 Q. Did the surveyors review the preliminary
22 results with you?

1 MR. COLBERT: Object to form of the
2 question. Lack of foundation. You may answer.

3 A. Say the question again, please.

4 Q. Did the surveyors review the preliminary
5 results with you?

6 MR. COLBERT: Same objection. You may
7 answer.

8 A. They discussed the results with us.

9 Q. The final results?

10 A. Yes.

11 Q. Did you -- did they discuss with you any
12 raw data?

13 A. They might have discussed along the way
14 what they were hearing as the process was going and
15 provided some input with that, but then provided
16 this as the final product.

17 Q. Did they provide you with any written
18 documents along the process?

19 A. Don't recall.

20 Q. Do you recall producing any of those
21 documents in this litigation?

22 A. Don't remember. I mean this has been

1 years ago when I was asked to pull some of these
2 documents and I don't recall what has been pulled.

3 Q. What were the results of the survey?

4 A. The top line results fell to the
5 Chamber's strong brand awareness, their name
6 recognition in a positive, very positive way, that
7 we were known for our core competencies, which was
8 lobbying and litigation -- I mean lobbying and
9 advocacy. Primarily in a nutshell, that's it.

10 Q. When you said brand recognition, did you
11 mean name recognition?

12 A. Yes.

13 Q. Does that brand recognition also include
14 products and services recognition?

15 A. Don't know. I mean it -- products and
16 services -- what I recall the surveyed showed was
17 that, was that we are very well-known for our core
18 competency and that is a product and that is a
19 service and that's lobbying and advocacy.

20 Q. Do you know if the survey specifically
21 tested the recognition of the name United States
22 Chamber of Commerce?

1 A. It had high name ID, which would be a yes
2 to your question. The U.S. Chamber of Commerce
3 would be the name ID and it had a high and very
4 positive name ID.

5 Q. Do you know if the results of this survey
6 showed the recognition, any recognition, of the
7 United States Chamber of Commerce circle logo that
8 we discussed recently?

9 A. I don't recall.

10 Q. Can you look at page number 50236?

11 A. Yes.

12 Q. I'm going to read a sentence appearing on
13 that page. It says: The bad news, our initial
14 research indicates an overall, quote, softness, end
15 of quote, for the USCC amongst small business
16 owners.

17 Can you explain to me what exactly is
18 meant by this sentence?

19 A. I don't know. I think we had very high
20 brand recognition and awareness among the political
21 influencers, the media, and places like that. I
22 think what this is saying is as you get away from

1 that, the small business owner may not understand
2 exactly all the benefits that the Chamber provides
3 for them.

4 Q. As well as -- as well as the small
5 business owners would have a weak recognition of the
6 name itself; correct?

7 MR. COLBERT: Object to the form of the
8 question in terms of characterizing the witness'
9 testimony. You may respond.

10 A. I'm not sure. I don't know how to answer
11 that. I don't know.

12 Q. Could that sentence in the survey explain
13 the weak recognition by the small business owners of
14 the name United States Chamber of Commerce?

15 MR. COLBERT: Could you point to which
16 sentence you are referring to?

17 MR. ELISEEV: The same sentence I just
18 read from the document, the bad news sentence.

19 MR. COLBERT: Are you asking the witness
20 to read something other than what's in the document?

21 MR. ELISEEV: No. Unless Ms. Cole needs
22 to.

1 A. No. I, I don't recall the details of
2 that statement.

3 Q. Do you remember discussing the bad news
4 as the bad news is described in this document?

5 A. Not specifically, no.

6 Q. With the surveyors?

7 A. Not specifically. I don't recall that.

8 Q. Do you recall discussing the softness for
9 the United States Chamber of Commerce as is
10 discussed within this document with anybody at the
11 United States Chamber of Commerce?

12 A. Don't recall.

13 Q. Did the survey also show the softness for
14 the United States Chamber of Commerce among the
15 mid-size businesses?

16 A. Do not know.

17 Q. You mentioned the high recognition of the
18 United States Chamber of Commerce brand among the
19 influencers. Who are the influencers?

20 A. If you turn to page 37, influencers,
21 leading media journalists, academic and foreign
22 media journalists, including among others, et

1 cetera, et cetera.

2 Q. So no small business owners are included
3 in this influencers group; is that correct?

4 MR. COLBERT: Object to the form of the
5 question. You may answer.

6 A. Don't know.

7 Q. Do you know how many of the influencers
8 were surveyed?

9 A. I don't know.

10 Q. Do you know how many of the political
11 insiders or political activists were surveyed?

12 A. I do not.

13 Q. Do you know how many investors or Wall
14 Street and financial professionals were surveyed?

15 A. I do not recall, no.

16 Q. Do you know how many small business
17 owners were surveyed?

18 A. Do not.

19 MS. PIETRINI: I would ask you not to
20 point out stuff, information to your witness, Mr.
21 Colbert. We think it's improper that you're
22 coaching the witness at the, at this point.

1 MR. COLBERT: I'm not coaching the
2 witness. The witness pointed at the sentence to me
3 and I put my pen on the same sentence, if that's
4 what you're asking about.

5 MS. PIETRINI: I'm just saying, please
6 stop.

7 MR. COLBERT: I have not been doing
8 anything.

9 BY MR. ELISEEV:

10 Q. Ms. Cole, your answer is you don't know?

11 A. Do not know.

12 Q. Do you know what is understood by general
13 public as one of the group, groups surveyed in this?

14 A. What page are you on?

15 Q. Survey. Page number 38?

16 A. I'm sorry, the question again?

17 Q. Who are the participants that are
18 included in the general public category of this
19 survey?

20 A. I do not know the specifics of that.

21 Q. You don't know what chat rooms or other
22 Internet portals were --

1 A. It talks, it says here they went through
2 Yahoo, AOL and MSN, including among others, so I'm
3 not aware of what those others were.

4 Q. You don't know what those portals or chat
5 rooms were?

6 A. Do not.

7 Q. Do you know how many individuals in the
8 general public were surveyed?

9 A. I do not.

10 Q. Do you know what a control means within
11 the context of a survey?

12 A. A control group is a group that is set
13 aside as a measurement for the other group that
14 you're working with. It's the benchmark against the
15 results of a survey.

16 Q. Do you know what controls, control groups
17 were tested in the survey?

18 A. Do not.

19 Q. Do you know how they were selected?

20 A. Do not.

21 Q. Do you know any criteria by which they
22 were selected?

1 A. Do not.

2 Q. Do you know if a control group was in
3 fact used in the survey?

4 A. I do not.

5 Q. What is your understanding of the purpose
6 of having a control group?

7 MR. COLBERT: Object to the form of the
8 question. Lack of foundation. You may answer.

9 A. To measure things against is what I
10 understand, although I'm not a survey expert.

11 Q. How exactly control group is used to
12 measure against other groups in the survey?

13 MR. COLBERT: Object to the form of the
14 question; lack of foundation.

15 A. Don't know.

16 Q. Were the results of the survey
17 implemented at the United States Chamber of
18 Commerce?

19 MR. COLBERT: Object to form of the
20 question.

21 THE WITNESS: Shall I answer? I'm sorry.

22 A. Not specifically this survey. They were

1 recommending a brand, large brand campaign, and we
2 did not do that. Although, the information was used
3 in order to shape some strategy. But not
4 specifically like I can talk to the other survey.

5 Q. When you say not this particular survey,
6 did you mean there were other surveys, the results
7 of which were implemented at the United States
8 Chamber of Commerce?

9 A. Yes. The Winston Group survey.

10 Q. Okay. Let's talk about that Winston
11 Group survey. It's Exhibit Number 14. When was
12 this survey conducted, the survey by the Winston
13 Group?

14 A. This was early '03.

15 Q. What was the purpose of conducting that
16 survey?

17 A. We wanted to do research on how to
18 obtain, well, how to retain and acquire small
19 business memberships. So it was a retention
20 component and membership component.

21 Q. Do you know of any survey conducted after
22 the Winston Group survey since then related to the

1 same topic?

2 A. I do not. I don't recall.

3 Q. What is the Winston Group?

4 A. Winston Group is a, a research firm that
5 provides research information for companies in a
6 broad way.

7 Q. Had you at any time worked with the
8 Winston Group prior to this survey?

9 A. I have not.

10 Q. Who recommended the Winston Group?

11 A. Don't recall.

12 Q. Do you know how it was selected?

13 A. Don't recall.

14 Q. Was your participation with the Winston
15 Group as close as with the New Media Strategies
16 group?

17 A. Yes.

18 Q. In terms of participating in the survey?

19 A. Yes. I actually went on focus groups and
20 did a number of things with this to, you know, to
21 execute this.

22 Q. Do you know how long the Winston Group

1 survey take?

2 A. I don't recall specifically, but it was
3 months.

4 Q. Do you know what groups of people that
5 were targeted by the Winston group?

6 A. What groups of people?

7 Q. Of participants, yes.

8 A. Okay. We targeted members, lapsed
9 members, prospects, we spoke with field directors,
10 and that's what I recall.

11 Q. And by members, you mean members that are
12 owners of the small or mid-size --

13 A. Small.

14 Q. Just small size?

15 A. Small. We did not have a mid-market
16 program at that time.

17 Q. Do you know how many participants were
18 targeted by the survey?

19 A. Well, can I read from the document?

20 Q. Please.

21 A. The one-on-one interviews with 20
22 prospective members and, with 20 prospective

1 members. The national survey; 400. One-on-one
2 interviews with sales reps, they contacted 10 of
3 those. And I'm sorry, did I skip one? Oh, the
4 focus groups. I'm sorry. The focus groups, it was
5 a dozen or so people. I don't know the specific
6 numbers.

7 Q. Do you know if the survey was conducted
8 in any way different than the way it's described in
9 this document?

10 A. No, I do not.

11 Q. Do you know if this survey targeted, in
12 any manner, Hispanic businesses?

13 MR. COLBERT: Objection to form of the
14 question.

15 A. Do not.

16 Q. Do you know if the survey targeted small
17 business owners of any ethnic background?

18 MR. COLBERT: Same objection.

19 A. No.

20 Q. It did not?

21 A. No, I do not -- it did not. As far as
22 I'm aware, it did not target specific ethnic groups.

1 Q. Do you know if a questionnaire for the
2 survey was prepared?

3 A. I'm sure it was.

4 Q. Did you participate in the preparation of
5 that questionnaire?

6 A. Yes. I reviewed some of those questions.

7 Q. Did you offer questions for the
8 questionnaire?

9 A. Don't recall. I'm -- it was a
10 collaborative effort among a lot of people.

11 Q. Was it also you who produced this
12 document to the attorneys who then produced it in
13 this litigation?

14 A. Yes.

15 Q. Do you know if there's -- did you bring
16 any other documents along with this document to be
17 produced in this litigation?

18 A. Brought this document.

19 Q. Do you know if any documents exist that
20 were prepared as part of the survey, whether by
21 United States Chamber of Commerce or by the Winston
22 Group?

1 A. There could be. I only was asked to get
2 the top line fact document.

3 Q. Do you believe you would have, somewhere
4 in the United States Chamber of Commerce, under your
5 control the documents that were prepared as part of
6 the survey?

7 MR. COLBERT: I'll object to the
8 continuing attempt to use this deposition as
9 discovery substitute. You may respond.

10 A. Again, ask the question.

11 Q. Do you know if there's any documents that
12 could be found by you in the United States Chamber
13 of Commerce that were prepared as part of this
14 survey?

15 A. There could be, yes.

16 Q. What documents would those be?

17 A. Don't know. It's been years. I'd have
18 to go back in my file and pull some of these. And
19 I'm not sure I have many of them, because when I
20 moved from corporate comm to the department I am in,
21 those documents were left with the communications
22 department. This was the document I focused on.

1 Q. Okay. Since you do not remember the
2 exact questions that were asked to the participants,
3 what areas were explored in that survey?

4 MR. COLBERT: Objection; lack of
5 foundation. You may respond.

6 A. What questions were asked, what questions
7 were explored? I don't know specifically, because I
8 don't recall. They ran the gamut from, you know,
9 the value prop, what we do, who we are, to, you
10 know, the product that they receive as a member, the
11 benefits associated with that membership. But I
12 can't really cite specific questions and script.

13 Q. Did the Winston Group survey inquire into
14 the awareness of the United States Chamber of
15 Commerce name among the small business owners?

16 A. Prospects or members? I mean, it doesn't
17 matter.

18 Q. Any?

19 A. Don't really know for sure.

20 Q. Do you know how the universe of
21 participants in that survey were screened?

22 A. No. Don't recall.

1 Q. Where did the Winston Group get the lists
2 of the prospective participants of that survey?

3 A. Through the data operations department.

4 Q. So the data operations department
5 provided the Winston Group with prior owners, the
6 lapsed owners, current owners -- I'm sorry.
7 Members. Prior members, current members and
8 prospective members; is that correct?

9 A. I'm not sure where they got the
10 prospective members from, but the current members or
11 the lapsed members would have come from the
12 database.

13 Q. Do you know if the responses to the
14 questions in the survey were recorded by the Winston
15 Group?

16 A. There was -- yes, there was a tape of it.

17 Q. Did you review any raw data during that
18 survey?

19 A. Explain raw to me.

20 Q. The raw means the preliminary results.
21 Anything that was collected in the field by the
22 surveyors.

1 Were any of that data presented to you?

2 A. Mostly Winston along the way would
3 provide feedback and we would provide feedback from
4 our experience sitting in the focus groups. That's
5 what I recall.

6 Q. Have you reviewed any transcript of the
7 interviews that were conducted as part of the
8 survey?

9 A. Yes. Years ago, yes.

10 Q. Do you know how the results of the survey
11 was tabulated?

12 A. No.

13 Q. Do you know how the results of the survey
14 were coded?

15 A. No.

16 Q. Do you know if there were any control
17 groups in the survey?

18 A. Don't know. Don't recall.

19 Q. Is it fair to say that the primary
20 purpose of the survey was not to test the brand
21 awareness of the United States Chamber of Commerce,
22 but rather the membership and the ability to retain

1 members by the United States Chamber of Commerce?

2 MR. COLBERT: I'll object to the form of
3 question as compound, vague. You can respond.

4 A. This, this -- this project was to
5 research how to retain and to attract small business
6 members.

7 Q. And, therefore, the awareness of the
8 United States Chamber of Commerce brand was not
9 tested in the surveys; correct?

10 A. Not that I recall. May I look under the
11 prospect piece, because that would --

12 Q. Sure.

13 A. Most -- what I see it to be a mostly
14 membership-based inquiries. I don't see anything
15 specifically on that topic when reviewing it.

16 Q. Do you recall seeing or discussing any
17 questions that related to the brand awareness by the
18 small business owners, by the United States Chamber
19 of Commerce brand awareness?

20 A. I do not recall.

21 Q. What were the general results of the
22 survey?

1 A. Well, that again, the brand image of the
2 Chamber is very favorable. And I'm going to look at
3 these key findings right here in terms of member
4 benefits. Again, they understand the main member
5 benefit to be our advocacy and lobbying benefits.

6 We identified some areas that were
7 important to them in terms of what the business
8 person experiences every day; taxes, litigation,
9 regulations, those things that keep the business
10 owners up at night.

11 That's primarily the top line.

12 Q. If the survey did not explore the brand
13 awareness, why is the brand image discussed in the
14 results of the survey?

15 A. Well, I think that's in terms of, in
16 terms of recognition of the name and the brand. But
17 I can't speak directly to that comment. I don't
18 recall.

19 Q. Even though you don't believe that the
20 brand awareness was in any way explored in the
21 survey; correct?

22 A. From what I recall, it could have been

1 part of the questions, but I don't specifically know
2 what that question was to get them to this
3 particular statement.

4 Q. But otherwise this -- strike it.

5 MR. ELISEEV: I would like to take a
6 five-minute break.

7 MR. COLBERT: Fine.

8 - - -

9 (Recessed at 11:30 a.m.)

10 (Reconvened at 11:42 a.m.)

11 - - -

12 BY MR. ELISEEV:

13 Q. Ms. Cole, early in your testimony you
14 mentioned that you were requested to recall your
15 interaction with Hispanic, with the United States
16 Hispanic Chamber of Commerce; is that correct?

17 MR. COLBERT: Object to the form of the
18 question.

19 A. I was asked when I first heard about the
20 United States Hispanic Chamber of Commerce, right.

21 Q. You mentioned that you were asked to find
22 documents or --

1 A. Any interaction or anything we would
2 have -- when I was with the corporate communications
3 department, we were asked to pull any information we
4 would have in regards to that particular topic.

5 MR. COLBERT: Objection; asked and
6 answered, continuing objection on the efforts to
7 take discovery at this point. You may continue.

8 Q. What did you find?

9 A. I don't remember.

10 Q. Do you remember if you found anything?

11 A. I don't recall what was given. I'd have
12 to see the list to recall my memory. This was a
13 while ago, and we were also asked to pull some
14 specific information as well. But that's -- the
15 best of my recollection.

16 Q. Do you recall what information, what
17 specific information you were asked to collect?

18 A. No. I was a part of -- I was one of many
19 who were asked this up through the VP of
20 communications, did we have any interactions with
21 the Hispanic Chamber of Commerce and if so, provide
22 that information. And I remember myself, it was,

1 no, I had not.

2 Q. Since that time, are you aware of any --
3 since that time have you encountered any documents
4 or any information related to any relationship
5 between United States Chamber of Commerce and United
6 States Hispanic Chamber of Commerce?

7 A. No.

8 Q. Do you know where United States Hispanic
9 Chamber of Commerce is located?

10 A. No, I do not.

11 Q. With respect to the 800 line, the
12 customer service line at the United States Chamber
13 of Commerce, are you aware of any instances where
14 any of the members, prior members or prospective
15 members of the United States Chamber of Commerce at
16 any time confused the United States Chamber of
17 Commerce with the United States Hispanic Chamber of
18 Commerce?

19 MR. COLBERT: I'm sorry. Could you read
20 that back again?

21 - - -

22 (Whereupon the following portion of the

1 testimony was repeated by the Court Reporter:

2 QUESTION: With respect to the 800 line,
3 the customer service line at the United States
4 Chamber of Commerce, are you aware of any instances
5 where any of the members, prior members or
6 prospective members of the United States Chamber of
7 Commerce at any time confused the United States
8 Chamber of Commerce with the United States Hispanic
9 Chamber of Commerce?)

10 - - -

11 MR. COLBERT: I'll object as beyond the
12 scope of direct and improper cross-examination.
13 I'll object based on form of the question as vague.
14 You may respond.

15 A. I don't recall any specific instance.

16 Q. Were you at any time told by anybody who
17 works for the 800 line that such confusion took
18 place?

19 A. No.

20 MR. COLBERT: Same objections.

21 Q. Do you receive mail at work?

22 A. Yes.

1 Q. Do you open this mail yourself?

2 A. My mail addressed to myself I do, yes.

3 Q. Do you recall receiving any mail that was
4 intended for the United States Hispanic Chamber of
5 Commerce rather than United States Chamber of
6 Commerce?

7 MR. COLBERT: Same objections.

8 A. Do not recall.

9 Q. Do you receive e-mail -- do you have an
10 e-mail account at work?

11 A. Yes, I do.

12 Q. Do you receive a lot of e-mails a day?

13 A. I don't know what a lot means?

14 Q. More than a hundred?

15 A. Yes.

16 Q. Do you recall receiving any e-mails that
17 were addressed mistakenly to the United States
18 Hispanic Chamber of Commerce?

19 MR. COLBERT: Same objections.

20 A. I do not recall.

21 Q. At any time during your employment with
22 the United States Chamber of Commerce?

1 A. At any time during my employment.

2 MR. COLBERT: Same objections.

3 Q. Do you recall receiving any telephone
4 calls that were mistakenly addressed to the United
5 States Hispanic Chamber of Commerce?

6 MR. COLBERT: Rather than say same
7 objection, I'm going to repeat them now, because we
8 are spending a lot of time on issues that do not
9 have any relationship to this witness' direct
10 testimony. Therefore, it's improper
11 cross-examination, vague and ambiguous. You may
12 respond.

13 A. Do not recall.

14 Q. Do you recall anybody mentioning to you
15 that they received either e-mail, mail or telephone
16 calls or any other communications that were directed
17 or intended to be directed to the United States
18 Hispanic Chamber of Commerce?

19 MR. COLBERT: Same objections.

20 A. I do not recall anything.

21 Q. At any time during your employment at the
22 United States Chamber of Commerce; correct?

1 MR. COLBERT: Same objections.

2 A. Yes.

3 Q. Are you aware that there are chambers of
4 commerce that are local or state?

5 A. There are both.

6 Q. Okay. What is the relationship between
7 the United States Chamber of Commerce and any of the
8 local or state chambers of commerce?

9 A. It's not my direct responsibility, but
10 they can be members of ours.

11 Q. So some are members and some are not?

12 A. Correct.

13 Q. Can you explain more about why some are
14 members and some are not?

15 MR. COLBERT: I'm going -- I have to say
16 on the record here now that you are spending,
17 probably half today has been spent on discovery
18 issues which are unrelated to this witness'
19 testimony.

20 I'm going to let you keep going, but you
21 are wasting a lot of time and resources of the
22 parties on things that you should have taken care of

1 before the testimony period. You may respond.

2 MR. ELISEEV: I disagree with you. I
3 think these issues are relevant to the issues that
4 were discussed by Ms. Cole during the direct
5 testimony specifically, and without exception, the
6 brand awareness and, therefore, all these questions
7 are clearly related to that line of questioning.

8 MR. COLBERT: We will have to agree to
9 disagree. You may respond.

10 A. Ask the question again, please.

11 Q. Yes. Can you explain to me why some
12 local or state chambers of commerce are members of
13 the United States Chamber of Commerce and some are
14 not?

15 A. They choose to be or not to be.

16 Q. Would then the state or local chambers of
17 commerce that have a relationship with the United
18 States Chamber of Commerce, are they considered
19 members of the United States Chamber of Commerce?

20 A. We have a, what's called an OAR division,
21 Office of Association Relations, and we have an OCCR
22 division, Office of Chambers of Commerce

1 Relationships. They are a member of OCCR, not my
2 division.

3 Q. Do you know what the criteria by which
4 some state or local chambers of commerce become
5 members --

6 MR. COLBERT: Object to -- I'm sorry. Go
7 ahead.

8 Q. -- members of the United States Chamber
9 of Commerce and why others not?

10 MR. COLBERT: I'm going to object to the
11 question in that it fails to lay a foundation. The
12 witness just said it's not in her area. And I
13 object to the extent that you're asking for her to
14 speculate as to why another organization chooses to
15 do something or not to do something as speculation,
16 and it's all beyond the scope of direct. You may
17 respond.

18 BY MR. ELISEEV:

19 Q. Let me explain more. I was wondering if
20 you have an understanding of what, by which criteria
21 the United States Chamber of Commerce chooses to
22 work or associate itself with some local or state

1 chamber of commerces but not others?

2 A. I do not know that criteria.

3 Q. Do you know the number of those state or
4 local chambers of commerce that do have affiliation
5 with the United States Chamber of Commerce?

6 A. I don't know that number specifically.

7 Q. Was the fact that there are a number of
8 state or local chambers of commerce who are
9 affiliated with the United States Chamber of
10 Commerce conveyed to the surveyors, specifically the
11 Winston Group or the New Media Strategies Group?

12 A. Don't know that. Don't recall.

13 Q. Do you recall obtaining any information
14 from the Winston Group or the New Media Strategies
15 Group regarding any confusion among the participants
16 between the United States Chamber of Commerce and
17 local or state chambers of commerce or United States
18 Hispanic Chamber of Commerce?

19 MR. COLBERT: I'll object to form of the
20 question as compound and vague. You may respond.

21 A. The confusion that I recall understanding
22 in the survey documents centered around the

1 relationship they have with us. In other words --

2 Q. They? Who are they?

3 A. The Chambers of Commerce or the small
4 business owners not quite understanding the
5 relationship the state or locals have with
6 headquarters. That's what I recall.

7 Q. But you do not recall any information
8 from the surveyors related to any confusion between
9 the, any of the state/local chambers of commerce and
10 the United States Chamber of Commerce on the one
11 side and the United States Hispanic Chamber of
12 Commerce on the other side?

13 A. Don't recall any of that.

14 Q. Are you aware of any permission that is
15 obtained by any of the state or local chambers of
16 commerce to use the phrase chamber of commerce from
17 the United States Chamber of Commerce?

18 MR. COLBERT: Object to the question.

19 A. I don't know. I don't know what their
20 benefits are.

21 Q. What do you mean by benefits?

22 A. I don't know that if -- what they're

1 permissions are to use our logo. In other words,
2 was it a benefit of membership. I don't know that.

3 Q. Do you know that in fact they do get a
4 permission?

5 MR. COLBERT: Object to form of the
6 question. Mischaracterizes the witness' testimony.
7 You may respond.

8 A. I am aware that they can use a web
9 sticker at their Websites, but I don't know the
10 extent of how they can use our logo in their
11 benefits. Again, not my direct responsibility, so
12 I'm going to assume things I don't want to say or --

13 Q. What is a web sticker?

14 A. A web sticker is a -- small business
15 members can use what's called a web sticker to
16 promote the membership on their Website. It is an
17 electronic thing that goes on the Website that says
18 proud member of the United States Chamber of
19 Commerce, and then they click on it and it links to
20 our Website.

21 Q. So you mentioned that these local or
22 state chambers of commerce use the logo of the

1 United States Chamber of Commerce?

2 A. I don't know that for sure.

3 Q. Do you know if the local or state
4 chambers of commerce that are not affiliated with
5 the United States Chamber of Commerce, whether
6 they're considered competitors of the United States
7 Chamber of Commerce?

8 MR. COLBERT: Object to the form of the
9 question as beyond the scope and as vague. You may
10 respond.

11 A. Don't know. I don't know who their
12 competitors are.

13 Q. Do you know if there are, in fact, any
14 competitors --

15 MR. COLBERT: Object to form of the
16 question.

17 A. I don't.

18 Q. -- for United States Chamber of Commerce?

19 A. For the Chambers of Commerces?

20 Q. For the United States Chamber of
21 Commerce?

22 A. As a whole?

1 Q. As an organization. Do you know if there
2 are any competitors?

3 A. We're often -- we often hear NFIB,
4 National Federation of Independent Businesses, as a
5 competitor; NAM, National Association of
6 Manufacturers.

7 There are other associations who would be
8 considered competitors of ours.

9 Q. What kind of associations?

10 A. Those two in particular.

11 Q. Any other?

12 A. NFIB caters or sells to small businesses.
13 NAM sells to probably -- manufacturers, larger
14 organizations. But those are the two I can recall
15 offhand who would be considered a competitor of
16 ours.

17 Q. In what areas do these organizations
18 compete with United States Chamber of Commerce?

19 A. They sell memberships into their
20 organizations.

21 Q. So, in other words, the competition goes
22 along the lines of membership fees?

1 MR. COLBERT: Object to form of the
2 question?

3 A. I know with NFIB it's membership fees,
4 yes. And I believe NAM has membership fees as well.

5 Q. And the United States Chamber of Commerce
6 has membership fees as well?

7 A. Yes.

8 Q. So by saying that these two organizations
9 are competitors, you mean that they compete with
10 United States Chamber of Commerce in the area of
11 membership fees; is that correct?

12 MR. COLBERT: I'm going to object to the
13 form of the question. Misstating the witness'
14 testimony. You may respond.

15 A. The organizations cited all have
16 membership fees. In terms of NFIB, they have a very
17 similar business model that we have for small
18 businesses, so we often compete in the same space in
19 that particular instance.

20 Q. Do these two associations also seek the
21 kind of donors that the United States Chamber of
22 Commerce goes after?

1 MR. COLBERT: I'm going to object again.
2 Beyond the scope of direct, goes to discovery and
3 it's improper, and I object it's vague. You may
4 respond.

5 A. We -- can I have the question again,
6 please?

7 Q. The United States Chamber of Commerce
8 does work with donors; is that right?

9 MR. COLBERT: Object to the form of the
10 question as vague.

11 Q. That donate money to the United States
12 Chamber of Commerce?

13 A. Yes.

14 Q. Okay. Is that the same category of
15 donors which are sought after by these two
16 associations?

17 A. I'm not sure.

18 Q. Okay. Do you oversee any marketing
19 events like conferences, seminars, workshops and so
20 forth that are offered to the small business or
21 mid-size business owners?

22 A. I do not oversee those.

1 Q. Are you aware of any seminars or
2 workshops, conferences and so forth, that are
3 offered to the members of, or prospective members of
4 United States Chamber of Commerce?

5 A. Yes.

6 Q. What kind of seminars? What kind of
7 events are those?

8 A. Well, the National Chamber Foundation
9 puts on lots of events in the Chamber and in other
10 parts of the country, as well as even some of the
11 committees have their meetings, the communications
12 department had a small business summit, which we
13 discussed earlier.

14 I mean, I get my own information from our
15 Website to find out what's going on in terms of that
16 because it's just very broad.

17 Q. Do you know if any of these events that
18 you just described specifically target Hispanic
19 businesses?

20 A. I'm not aware.

21 MR. COLBERT: Object to form of the
22 question.

1 A. I'm not aware of that.

2 Q. Are you aware of companies whose names
3 lead off with U.S. or United States, any companies?

4 A. Just they -- there are -- yes. Yes.

5 Q. A lot of them?

6 MR. COLBERT: Object to form of the
7 question as vague.

8 A. Yeah, I don't know what a lot would mean.

9 Q. Over a thousand?

10 A. Don't know. I wouldn't know.

11 Q. During the period of time that you have
12 lived in the D.C. area, have you encountered names
13 of companies whose names lead off with U.S. or
14 United States?

15 MR. COLBERT: Continuing objection.
16 Again beyond the scope of direct. You may respond.

17 A. U.S. Treasury Department, U.S. Department
18 of Commerce. I mean those are government agencies,
19 but you want specific private companies?

20 Q. Yeah, and I don't need --

21 A. I can't think of any offhand.

22 Q. Are you aware of the existence of such

1 companies?

2 MR. COLBERT: I object. Asked and
3 answered. You may answer again.

4 A. Yes, but I would have to think about some
5 names.

6 Q. I don't need specific names. I just
7 wonder if you're aware of the existence of such
8 companies?

9 A. Yes.

10 Q. Do you believe there are a lot of those?
11 More than 50?

12 A. Could be.

13 Q. More than a thousand?

14 A. Could be.

15 Q. More than a hundred thousand?

16 A. Don't know.

17 Q. Has anybody at the United States Chamber
18 of Commerce ever communicated to you that there was
19 any communication or relationship between the United
20 States Chamber of Commerce and the United States
21 Hispanic Chamber of Commerce or United States
22 Hispanic Chamber of Commerce Foundation?